UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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UNITED STATES OF AMERICA,

v. 15 Cr. 643 (PKC)

GARY HIRST,

Defendant.

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September 14, 2016
10:00 a.m.

Before:

HON. P. KEVIN CASTEL

District Judge
and a Jury

APPEARANCES

PREET BHARARA
United States Attorney for the
Southern District of New York
BY: BRIAN R. BLAIS
AIMEE HECTOR
REBECCA G. MERMELSTEIN
Assistant United States Attorneys

SHER TREMONTE LLP
Attorneys for Defendant
BY: MICHAEL TREMONTE
JUSTINE A. HARRIS
NOAM KORATI BIALE

ALSO PRESENT:
SPECIAL AGENT SHANNON BIENIEK, FBI
ELLIE SHEINWALD, Paralegal
GARY SMITH, Paralegal
RYAN POLLOCK, Paralegal

(Trial resumed; jury not present)

THE COURT: Good morning. Let me try and take some of these in order until our jurors arrive, and I am instructing my deputy to let me know the minute we have all of our jurors.

Any progress on the document with the Hirst/Hlavsa exchange?

MR. BLAIS: Unfortunately not.

THE COURT: I will be ruling on that.

So when does this come up in the sequence?

MS. HECTOR: It comes up in Mr. Hlavsa's testimony. He is the next witness after Mr. Manley. It's not at the outset of his testimony. I would say it's at least probably about an hour in. It will probably be after the morning break.

If your Honor would hear us a little more on it, I am happy to address it.

THE COURT: I gave you an opportunity to submit anything you wanted to submit on this. You could have done that this morning.

What do you have to say?

MS. HECTOR: Well, your Honor, I think I have not heard the defense articulate a reason why that additional portion of the text message is necessary to complete the exchange before. It does not shed light on the contents of that exchange.

What they are trying to do is impeach his reaction to that. And to the extent they want to try to impeach his reaction to that, they can ask him, After you had that exchange, Mr. Hlavsa, did you continue to have communications with Mr. Hirst that day about other topics relevant to your business dealings with him? Depending on his answer to that, they may be able to put additional pieces of the chat.

We offered that they can put the first three lines after the chat, meaning the 9/28/2010, 11:57:28 to 11:58, if they want to make the point that the very next communication was on an alternative topic. I thought that was a fair compromise.

THE COURT: Just give me your argument. I don't need to know what your fair offer was at this point, unless I should also listen to what their counterproposals were in the negotiation.

I gave both sides an opportunity to negotiate. I understand that you can't always agree on everything. That doesn't make anybody a bad person. But I would like to hear your legal argument.

MS. HECTOR: Sure. And I think that additional portions of that additional section of the chat are extremely prejudicial because I do think, as I said yesterday, that portions of that they may try to make arguments for the truth of those.

THE COURT: OK. These are arguments you made yesterday. I am happy to hear you on anything new that you have come up with in the meantime.

If the point of this, for you or for Mr. Tremonte, is to revisit the discussion we had yesterday on the record, tell me what the value of rehashing what we discussed last night is.

MS. HECTOR: That's fair, your Honor. I just wanted to make sure our position was clear.

THE COURT: And I did ask you was there something else that you wanted to point me to where you felt there was some prejudice to the government in sneaking in inadmissible hearsay, and you pointed to one item.

MS. HECTOR: Yes. I would like to point to a couple of others, your Honor.

THE COURT: That would be new and useful.

MS. HECTOR: OK. So 9/28/2010, 2:21:45, Mr. Hlavsa indicates to Mr. Hirst that his involvement in a particular entity, NatProv, should be minimal because he doesn't want to create a perception of conflict of interest. Mr. Hirst agrees. It could be utilized to suggest that Mr. Hirst is interested in doing things on the up-and-up, etc.

9/30/2010, 11:35, this is the beginning of the discussion that I pointed out to your Honor yesterday that ends at 9/30/2010, 11:43, where Mr. Hirst is suggesting that he is not in the loop on something, that he received a letter from Shant, the attorney, and he refused to sign it.

And so I think, again, that could be potentially used by the defense to suggest that Mr. Hirst is interested in following the rules, is consulting with attorneys on issues, and is maybe not in the loop on issues going on in the company. That I think, again, could be utilized by them to make defensive arguments that are improper.

THE COURT: Thank you very much.

Mr. Tremonte.

MR. TREMONTE: Judge, I think we have made all the legal arguments that we have to make.

THE COURT: Thank you very much.

Our jury is here. We will bring them in.

(Continued on next page)

(Jury present)

MARSHALL MANLEY, resumed.

THE COURT: Good morning, ladies and gentlemen. Good to see you all.

We are back in action.

Mr. Manley, the Court reminds you that you're still under oath.

THE WITNESS: Thank you, your Honor.

THE COURT: You may proceed.

MS. HECTOR: Thank you, your Honor.

Ms. Sheinwald, would you mind pulling up Government Exhibit 640, which I believe was on the screen and we were discussing at the time we broke yesterday.

DIRECT EXAMINATION (Cont'd)

BY MS. HECTOR:

Q. Mr. Manley, just to situate ourselves again, and you still have the paper copies of the documents, if you would like them.

What is this agreement?

A. Talking about 640?

Q. 640, yes.

A. It's a share purchase agreement among Asia Special Situation Acquisition Corp. and Marseilles Capital, LLC and Marshall Manley.

Q. Again, Marseilles Capital is your entity?

A. It's an entity I had an interest in, yes.

MS. HECTOR: Now, Ms. Sheinwald, if we can turn to page 3, section 2, and if you could highlight section 2 of that document in its entirety.

JUROR: We don't have anything on our screen. It says "signal out of range."

THE COURT: We will see what we can do to correct that.

JUROR: It's a delay. It takes a couple of seconds.

THE COURT: We have a antiquated system and it has to travel across the room.

MS. HECTOR: May I?

THE COURT: You may proceed.

BY MS. HECTOR:

Q. So, Mr. Manley, how many shares of the company were you to receive under the terms of this share purchase agreement?

A. It says 5,333,333 shares.

MS. HECTOR: Ms. Sheinwald, can you just highlight that figure so that the jury can see where we are talking about in the document.

Q. When we broke yesterday, you said that this was paid for by a nonrecourse note, and I think that's the precise moment we broke at.

What was the nonrecourse note?

A. The nonrecourse note is a promissory note. In this case, it was for $20 million, in which Marseilles Capital and/or myself are not personally liable.

THE COURT: Are not personally liable?

THE WITNESS: Are not personally liable.

THE COURT: Thank you.

Q. When is the note due to be paid?

Mr. Manley, if I could just point you to Section 2.3 of the document.

A. It's supposed to be paid on December 31, 2015.

Q. Now, Mr. Manley, were the shares that you received under the terms of this share purchase agreement restricted or unrestricted?

A. Restricted.

MS. HECTOR: Ms. Sheinwald, I think we can take that down.

BY MS. HECTOR:

Q. Now, Mr. Manley, turning back to January 23, 2010, the date you start as CEO of Gerova, had the acquisitions of Stillwater and Weston taken place at the time you began as CEO?

A. My understanding was the agreements had been signed and -- the answer is yes, they were finalized on the 23rd.

Q. Did you play any role whatsoever in those acquisitions?

A. No.

Q. Did you know how the opportunity to acquire Stillwater was first brought to ASSAC?

A. No.

Q. Did you know how the opportunity to acquire Weston was first brought to ASSAC?
A. No.
Q. Now, when you began as CEO of Gerova, where were you working out of?
A. Florida. My house.
Q. Did Gerova have a U.S. office location at that time?
A. No.
Q. As CEO, what were your top priorities in those early days?
A. Let me explain it to you. OK?

When I came into the Home Insurance Company it had a capital base, net worth of approximately 600 to 800 million dollars and 10,000 employees. On January 23rd, Gerova, assuming you believe whatever these assets were, were valued at somewhere between 600 to 800 million dollars.

Gerova had one employee, me, and a part-time employee, Michael Hlavsa, who is the financial guy. So we didn't have an office. We didn't have phones. We didn't have employees except for myself. OK. We had nothing.

So my top priorities were, first, to find out what these assets were. There was a building in West Palm Beach, property in West Palm Beach. There were houses in Ohio. There were insurance policies. There were interest in other limited partnerships scattered around the country, around the world, as far as I knew. There was an interest in the reinsurance company in Bermuda. There was interest in a reinsurance company -- I forget where it was. It was offshore.

So I had to find out what these assets were. I wanted to put together a team. Because it doesn't do me any good to know that there is a building in New York because I don't how to value it, I don't know what to do. I need experts. So my top priority was to find out the assets and put together a team at that time. Because we didn't have anybody.

We had, as I said, Asia Special Situation, which raised money and they did an acquisition, but that was it.

Q. What did you do to start to put together a team?

A. I went to search people and I began to interview people. The first person I found was an executive assistant, somebody to help me manage my time and things like that. That's what I did.

I eventually interviewed and hired a person called Lou Hensley, who had come from Wells Fargo, and he was going to be in charge of insurance.

I hired Michael Grant, who I had met before. Originally I met him when he was Merrill Lynch, and he had worked for Mr. Dammerman and I when we were doing certain projects before. I hired him as an assistant to be on the ground and help find out what these assets were.

I hired Tore Nag, who was a former banker, who was in New York, as chief operating officer, whose prime responsibility was to see what Stillwater was all about.

Then I had other people I was going to hire, but -- a new chief financial officer and a new general counsel. The new chief financial officer was a gentleman who had been at PaineWebber, which had been a very big investment banking brokerage firm in the United States at that time, and the new general counsel was going to be a woman who was associate general counsel at Office Depot.

Q. After Gerova was formed and you took over as CEO, did Jason Galanis have an official role at the company?

A. No.

Q. Despite not having an official role, what, if any, involvement did he have in Gerova after January 2010?

A. Mr. Galanis was not an officer or a director or an employee of the company. Mr. Galanis, however, had background of the assets. He had apparently been involved in negotiating these deals with Stillwater and what you call Weston. OK. If I remember correctly, they told me he was a shareholder or involved in something called Noble, was a big shareholder. OK. And he knew the shareholders. So from my point of view he was a source of knowledge, but not a person to make decisions or do things like that.

Q. How often did you interact with him?

A. I would say during the 60, 70 days. Not every day, you know. You know, he would often communicate with me and sort of

interfere with whatever I was trying to do. But I can't answer the question how often. I don't know what that means.
Q. You just said interfere with whatever you were trying to do. In what way did you perceive him as trying to interfere with what you were doing?
A. He always had a deal. He always wanted us to make an acquisition and do something, and I had to be polite to him because he was a source of knowledge. So when I am trying to spend my time trying to find out what our assets were, trying to figure out to hire people, he would want to talk to me about a potential acquisition. You know, you can't do an acquisition unless you know what's happening, and I didn't have the people to know what was happening. On the other hand, you want to be polite and you want to spend the time. So we spent the time.
Q. As CEO at the time, did you have a view of whether Mr. Galanis should be involved in the fashion he was involved as you have described at Gerova?
A. I did have a feeling. I did not want him involved.
Q. Why did you not want him involved?
A. He didn't have the background. He didn't have the business knowledge. I thought there were much better people out in the world who I can get to, and I couldn't understand what his function would be on an ongoing company.
Q. What was your relationship like with him at this time?
A. I tried to keep it friendly. It became contentious because

basically I said, Jason --

MS. HARRIS: Objection.

THE COURT: Pause. Put a new question to the witness.

Q. You described your relationship as contentious. In what way was your relationship with Mr. Galanis contentious at that time?

A. He kept on pushing to be involved and I told him that he couldn't be involved.

MS. HARRIS: Objection.

THE COURT: Excuse me. Basis.

MS. HARRIS: Hearsay.

THE COURT: Overruled.

A. That we were going to put together a team to run the company and that was not going to be him, and he was just a source of knowledge and assistance when we needed him because of his background.

Q. What, if anything, did you know about sanctions imposed on Mr. Galanis by the SEC?

A. At that time I was told that there was some SEC sanctions that he couldn't be an officer or director of a company, of a listed company.

Q. How, if at all, did that impact your view of his role at Gerova?

A. Even if he didn't have that, he still would not have been involved.

Q. What was Mr. Hirst's position at Gerova after the acquisitions?
A. His title was president.
Q. What was his role as you understood it at the time?
A. Well, he didn't really have a role. However, he had a background and experience in dealing with the insurance aspects of the company, the people in Bermuda and Allied Provident and Amalphis. So he spent time dealing with them, essentially.
I remember there was an issue of licensing in Ireland that he did an investigation, and also he and I flew to Bermuda where he introduced me to the chairman of Northstar. And I also met there some people from Deutsche Bank that seemed to have some sort of involvement.
Q. How often did you interact with Mr. Hirst during your time as CEO?
A. Again, a similar question. I interacted at times with him. Not consistently. Not every day. Either he communicated with me and that was it. And I did go up to his house once. He lived further north in Florida. I went there. And we did go to North Carolina where he wanted to meet Mr. Hensley.
Q. What was the relationship between Mr. Galanis and Mr. Hirst, if you know?
MS. HARRIS: Objection. Foundation.
THE COURT: I'm sorry?
MS. HARRIS: It was a foundation objection.

THE COURT: If you know.
A. They had worked together for apparently many years at Asia Special Situation and they seemed to work together close as colleagues.
Q. You mentioned that you met with Mr. Hirst occasionally in person, correct?
A. Yes.
Q. When you would meet with Mr. Hirst, would Jason Galanis be present often, or no?
A. Sometimes he would be present at Mr. Hirst's insistence.
Q. At what?
A. Mr. Hirst initiated it. Sometimes he would be present.
Q. Mr. Manley, I would now like to turn your attention to April 7, 2010. Did you attend a meeting of the board of directors at that time?
A. Yes.
Q. Where did that meeting occur?
A. In the Bahamas.
Q. Do you recall that you had attended any Gerova board meetings prior to that date?
A. There were no Gerova board meetings prior to that date. There was one I recall, a unanimous consent, which is essentially when we hired Tore Nag, the directors signing a document authorizing it, but there was no board meetings before then.

Q. Do you recall who the board members were who attended that meeting?
A. Some of them.
Q. Who do you recall?
A. Mr. Hirst, Mr. Doueck. There were two board members from Europe. De Waal, I think. I'm not sure what the other name was. Myself. There was a gentleman from Malta who was involved in Noble. That's who I recall at this time.
Q. Was Mr. Galanis at that meeting?
A. Mr. Galanis showed up. He was there. But he -- I was only at the board meeting for two or three minutes so I can't tell you if he was there after I was there. But he was present.
THE COURT: He was present during the board meeting when you were there?
THE WITNESS: Not during the board meeting. He was present in the -- he was present in the hallway of the hotel or something like that.
THE COURT: Thank you.
Q. Now, prior to going to that meeting, were you aware of the planned agenda for that day?
A. Yes.
Q. What was your understanding of the topics that were going to be addressed at that board meeting?
A. I had prepared an agenda as chairman of a number of items, also setting up committees, who the committee members were

going to be, and I was also proposing, at one of the committees I was going to propose the hiring of the new chief financial officer and the new general counsel. There were a number of items that the lawyers said that we had to do in order to comply with the law that were on the agenda. It was a very extensive agenda.

Q. What happened at the outset of the meeting?

A. I called the meeting to order. Mr. Hirst essentially spoke up and he moved a motion that I should be fired.

MS. HARRIS: Objection.

THE COURT: One second, please.

Overruled.

Q. Prior to that meeting, did you have any knowledge that you were going to be fired?

A. No.

Q. Were you provided with an explanation for your firing?

A. The explanation was that Mr. Hirst said that I had been chairman of the board of a bank in California and a couple of years after I left, when I moved to New York, the bank was taken over because of a capital deficiency, which happened to hundreds of banks at that time, and I had somehow had not revealed that to Gerova.

Q. Had you in fact withheld that information?

A. No.

Q. At the time did you believe that it was the true reason for

your firing?
A. No.
Q. Why didn't you believe that that was the true reason?
A. Well, A, it had no relevance to my role.
MS. HARRIS: Objection, your Honor. It calls for speculation.
THE COURT: Sustained.
Q. Had you in fact been involved with the bank in California?
A. Yes.
Q. What happened to that bank?
A. I was chairman of the board of the bank and I left when I moved to New York City, and several years later it was taken over, as were hundreds of other banks.
Q. Was it taken over during your involvement in that bank?
A. No.
Q. Why had you left that bank?
A. Because I moved to New York.
Q. Were there ever any allegations or investigations of you in connection with your role at that bank?
A. No.
Q. What happened immediately after you were fired that day?
A. I went upstairs to my room and they sent up Mr. Bianco to see if he can negotiate a severance agreement, because I had a contract, and we were trying to negotiate a severance.
Q. Who was Mr. Bianco?

A. Mr. Bianco was a person who had been involved somehow with ASSAC. He was a lawyer and I think he said he was a professor at Yale Law School.
Q. Were there also lawyers involved in those negotiations?
A. Well, what I found out, it turned out that there were lawyers there from DL Piper, which is a very, very large law firm, who I did not know were coming there. So apparently they were involved because whoever wanted to fire me had them come.
But the negotiations were essentially in my room with Mr. Bianco. We would talk, and he would go downstairs to talk to somebody and then he would come back up, and then eventually documents were prepared, I assume, by DL Piper, and they would come up and we would change them back and forth.
Q. Did you sign documents regarding your separation while you were still there in the Bahamas?
A. Yes.
Q. Can you look at what has been marked into evidence as Government Exhibit 242. We will call it up on the screen, but you also have it at your desk.
A. I have it.
Q. Do you recognize this document?
A. There is the separation of release agreement. It doesn't actually have my signature. It has block signatures. But this looks like the document that we signed.
Q. Now, looking at the first page of this agreement and the

first paragraph, what is the date of the agreement?
A. April 8, 2010. The negotiations went past midnight, even though I think the board meeting started at 9 or 10 in the morning.
Q. Who does it indicate are the parties to this agreement?
A. Gerova Financial Group, LTD, formerly Asia Special Situation Acquisition Corporation, and Marshall Manley.
Q. Is that indicated at the top paragraph there?
A. Yes.
Q. Can we turn to the last page of this document.
I note this is not a handwritten signature, but who is indicated here as signing on your behalf?
A. Myself.
Q. Who is indicated as signing on behalf of Gerova?
A. Mr. Hirst.
Q. Now, turning back to the first page of this document, can you just describe the general terms for us as what you negotiated as part of your separation agreement?
A. Starting seven months afterwards, which would have been about November of 2010, I was supposed to start getting paid in 40 installments, for a payout of $4 million. Any unearned or unpaid salary or vacation that had accrued to the separation date, which is April 8, I was supposed to get paid, and also any out-of-pocket expenses, which I had submitted documents.
I was supposed to get medical insurance for 47 months,

or continue coverage on the medical plan. And I was supposed to get a car allowance during the payout period of $1,000 a month. I think that's it.

MS. HECTOR: Now, could we pull up Government Exhibit 242A, which is in evidence.

Q. I know the document we just looked at had the typewritten signatures. Let's look at 242A.

Does this look like another copy of the document you just reviewed?

A. It does, and it seems to have my signature and initials.

MS. HECTOR: If we can just flip through, Ms. Sheinwald, the pages of this document.

Q. Mr. Manley, you can flip through it as well, and you can see at the bottom of several of the pages there are signatures indicated.

Do you recognize those two signatures?

A. I recognize my initials. I don't recognize the signature of the other person.

MS. HECTOR: Ms. Sheinwald, continue on.

Q. Now, Mr. Manley, what happened to those 5,333,333 shares of Gerova that had been purchased by the entity Marseilles Capital in connection with your employment agreement?

A. The note was canceled and they were returned to the company.

Q. Can I draw your attention to Government Exhibit 243.

A. I have it, ma'am.
Q. Do you recognize this document?
A. It's a share purchase agreement -- repurchase agreement. I'm sorry. Repurchase agreement.
Yes, I recognize it.
No, I'm sorry, I don't recognize it.
I'm sorry. I pulled up another document. I'm sorry.
Q. Exhibit 243.
A. 243. I had another document behind it.
Q. That's OK. Is this the share repurchase agreement that you negotiated?
A. Yes.
Q. If you look at the first paragraph, what is the date of this agreement?
A. April 8, 2010.
Q. Who are the parties to this agreement?
A. The parties to this agreement would be Gerova, Marseilles Capital, and myself.
Q. If we could turn to the last page of this document.
A. Yes.
Q. I know, again, it's indicated the signatures are typewritten, but who is indicated signing this document on behalf of Gerova Financial Group?
A. Mr. Hirst.
Q. Who on behalf of Marseilles and yourself?

A. Me.

Q. If we can turn now again to the first page of this document, the section entitled "Repurchase."

MS. HECTOR: Ms. Sheinwald, if you can call out the entire section under (1) Repurchase.

A. I see that.

Q. What were the general terms of the repurchase of the shares?

A. Well, Marseilles was going to sell, assign, transfer, deliver to the company, and the company was going to purchase from Marseilles the 5,333,333 shares. The price was $3.91875 per share, for a total purchase price of $20,900,000 which was going to be paid in 12 equal monthly installments of $75,000 apiece, with the extra 900,000. The first 20 million was just cancellation of the note.

Q. So the first 20 million was cancellation of the note. What additional amount of money were you owed under the terms --

A. $900,000.

Q. Did you, in fact, receive that $900,000?

A. I received a portion, but not all of it.

Q. Now, under the terms of your separation agreement, you also indicated that you were entitled to $4 million.

Did you receive that $4 million?

A. No.

Q. Did you perform any work on behalf of Gerova after April 8,

2010?
A. No. I sent the documents to Mr. Hirst, which I was required to do under the agreement and did what was part of the agreement, but no.
Q. You indicated that you weren't paid the $4 million under the terms of your separation agreement and you only received a portion of this $900,000.
What did you do as a result of your failure to receive those sums?
A. I personally sued Gerova under the employment agreement and Marseilles Capital, and I don't know if I was a party too, sued under the share repurchase agreement.
Q. Without getting into all the details of those lawsuits, what was the end result in terms of did you recover any money?
A. We got judgments, but we did not recover. I don't think we recovered on the judgments, no.
Q. Did you recover any moneys under the terms of these agreements, to the best your recollection?
A. Subsequently there was global settlement of all of the disputes I had and I recovered money from that.
Q. Do you recall approximately?
A. 400,000.
Q. Now, Mr. Manley --
A. But it wasn't paid to me by Gerova.
Q. Who was it paid to you by?

A. There was an entity that bought my claims against Gerova and they paid it.
Q. Now, prior to meeting with the government, had you ever heard the name Ymer Shahini?
A. No.
Q. Are you aware of any involvement of an individual named Ymer Shahini and Gerova?
MS. HARRIS: Objection. Asked and answered, your Honor.
THE COURT: Sustained.
Q. Mr. Manley, I would like to call your attention to Government Exhibit 250.
MS. HECTOR: And if we can pull that up for the jurors.
Q. Could you take a moment to look at this document, just look through it.
A. I have it.
Q. Turning to the last page of this document.
A. Yes.
Q. Do you see the signature under the title The Company, Gerova Financial Group, Ltd.?
A. Yes.
Q. Is that your signature?
A. No.
Q. Did you sign this document?

A. No.
Q. Why do you believe that's not your signature?
A. Well, one, because it isn't; two, because I never saw this document until the government showed it to me; and three, I had never heard of Ymer Shahini; and, four, I never did business with anybody from the Czech Republic.
Q. So turning to the first page of this document, please.
MS. HECTOR: If we could highlight that first paragraph.
Q. What is the date of this agreement?
A. January 22, 2010.
Q. Did you become a CEO effectively January 23, 2010?
A. Yes.
Q. When you mentioned just now that you didn't do business with someone from the Czech Republic, what is the address provided for Ymer Shahini on this document?
A. You will have to excuse my pronunciation. Pletarska 1819, Varensdorf 40742, Czech Republic.
Q. Mr. Manley, did you have any involvement in the negotiations of the acquisition of Weston?
MS. HARRIS: Objection. Asked and answered, your Honor.
THE COURT: Overruled.
Q. You may answer.
A. No.

Q. Now, Mr. Manley have you ever told anyone that you in fact signed this agreement?
A. No.
MS. HARRIS: Objection.
THE COURT: Overruled.
Q. Now, Mr. Manley, I would like to now draw your attention to Exhibit 251.
MS. HECTOR: And if we can pull that up on the screen.
Q. If you could just take a moment to look through this document.
A. I have it.
Q. Prior to being shown this document by the government, had you ever seen it before?
A. No.
Q. If you could look at the date on the front of this document, what is the date?
A. March 29, 2010.
Q. Were you still CEO of Gerova at that time?
A. Yes.
Q. As CEO, would this have been something that you would have been expected to be aware of?
MS. HARRIS: Objection.
THE COURT: Overruled.
A. No.
Q. Why?

MS. HARRIS: Objection.

THE COURT: Overruled.

A. Well, it appears to be a significant document affecting the operations of Gerova, and I should have known about it.

MS. HECTOR: Can I have one moment, your Honor?

THE COURT: Yes.

MS. HECTOR: Nothing else, your Honor.

THE COURT: All right. You may cross-examine.

CROSS-EXAMINATION

BY MS. HARRIS:

MS. HARRIS: Good morning, your Honor.

Q. Good morning, Mr. Manley.

A. Good morning, ma'am.

Q. So I want to talk to you about Stephen Weiss.

A. I'm sorry. About what?

Q. You got to know him well in a deal that you had worked on, correct?

THE COURT: Stop. The name was Stephen Weiss.

THE WITNESS: OK.

MS. HARRIS: I'm sorry.

Q. You got to know him well in connection with a deal you had worked on?

A. I got to know him, yes.

Q. And that was well before 2009, is that right?

A. You mean the other thing?

Q. The other deal.
A. I don't know if I got to know him well, but I got to know him, yes. He represented somebody on the other side, yes.
Q. It was well before 2009, correct?
MS. HARRIS: I'm sorry. We are having apparently a technical issue in transferring the computers over.
THE COURT: Take your time. Perhaps you can see if there is another area you can get into.
MS. HARRIS: That's fine, Judge.
Q. In any event, the deal you worked on across from Stephen Weiss was before 2009?
A. I don't know if it was before 2009 or in 2009. It was before I heard about Gerova.
Q. And you had known Stephen Weiss because you had also gone to law school together, correct?
A. I did not know him in law school. I know he went to NYU Law School and graduated in my year. I have no recollection of having known him in law school.
Q. You both worked at the same law firm at one time, correct?
A. He worked in the New York office. I was in the Los Angeles office. I did not know that he had worked in the New York office. It was a law firm of about 8 or 900 lawyers.
Q. It was something you had learned later?
A. Yes.
Q. And it was Mr. Weiss, as you testified, that introduced you

to Jason Galanis?
A. That's correct.
Q. And he approached you about this opportunity?
A. This opportunity you mean to meet Mr. Galanis, yes.
Q. Correct. And the opportunity potentially to become CEO of Gerova, correct?
A. That was later on in December of 2009.
Q. So it's fair to say that Stephen Weiss had approached you about a number of opportunities in connection with Jason Galanis, correct?
A. No.
Q. Well, first, the White Energy deal, is that right?
A. He approached me about White Energy and then about ASSAC.
Q. So more than one?
A. Yes.
Q. And you began meeting with Jason Galanis in the fall of 2009?
A. I met him for the first time in the late spring, fall of 2009.
Q. You met with him on several occasions, correct?
A. During what time? Your question is -- yes, I met him on several occasions up until January 23, 2010.
Q. I am drawing your attention to the spring and fall of 2009.
A. No. I met with him one time in either California or Reno, Nevada. We either had lunch or drinks when I first met Mr.

Galanis, and then I met with him again sometime later, probably in December of 2009.

Q. And in terms of your meetings with Jason Galanis, you got advice or guidance from Mr. Stephen Weiss, correct?

A. I think the phrase was guidance. He introduced me.

Q. You were trying to get a job, correct?

A. No.

Q. You were pursuing an opportunity, correct?

A. No.

Q. It came to be that you became CEO of Gerova, correct?

A. Yes.

Q. And you met with several different entities in connection with that position that you ultimately got, correct?

A. I'm sorry. I don't understand.

Q. You met with shareholders, correct?

A. Of ASSAC, yes.

Q. And you met with Roth Capital?

A. Who?

Q. Roth Capital, correct?

A. Yes.

Q. And you met with Credit Suisse at one point, correct?

A. Yes.

Q. In those meetings, you were discussing your background, correct?

A. Yes.

Q. And your qualifications, correct?
A. Discussed my background. They had to make a decision on my qualifications.
Q. But you were talking about your background in the hopes that you would be voted to become the CEO of Gerova, correct?
A. Actually, I was just telling my background and they had to make the decision. You make it sound like I was trying to sell something. I wasn't. I was telling them my background.
Q. You were telling your background for a reason, correct?
A. Because I was asked to do it.
Q. You were interested in the position, correct?
A. If it was approved, I was interested in taking the position.
Q. In fact, you wrote up some details in a written document about your background, correct?
A. Not that I recall.
Q. Let me show you what has been marked for identification --

MS. HARRIS: Your Honor, here is where I may need some help with the technology.

THE COURT: How are you doing on the technology?

MR. TREMONTE: It might be a switch in the front of the courtroom. So we would ask permission to approach.

THE COURT: Sure.

Ladies and gentlemen, would you like to stand up and stretch for a minute?

MS. HARRIS: In the meantime, I will bring a paper copy up to the witness.

THE COURT: That's fine.

Ladies and gentlemen, once upon a time in trials in this courthouse paper was used to present evidence, as remarkable as that sounds.

Actually, when I started as a young law clerk for a judge sitting in this court, the judge whose portrait hangs in the back of the courtroom, who is still a judge in this court, the opinions were typed on a typewriter and of course additional copies were done through carbon paper and which was placed on top of onion skin paper. So the second and third copy were typed on to almost like tissue paper, and that's how it was done not long ago.

Legal research was done all through books, but now we have taken several steps forward and occasionally a few steps backwards along the way.

So with that said, how are we doing?

MR. BIALE: We are on the monitor. The issue we are having now, we don't seem to be able to show it only to the witness and lawyer and not to the jury. So we are trying to sort that out.

THE DEPUTY CLERK: How about now?

JUROR: It's going to sleep.

MS. HARRIS: This is not an exhibit that is going to be exhibited to the jury.

THE COURT: We can proceed with the paper copies.

MS. HARRIS: That's fine.

BY MS. HARRIS:

Q. Does that refresh your recollection that you prepared a written biography of your background?

A. This biography was prepared before. It was already in existence. It was not prepared for the purpose of transmission at this time. It already existed.

Q. I understand. Does this refresh your recollection that in October 2009 you sent a copy of this biography to Jason Galanis and Stephen Weiss?

A. I sent to Stephen Weiss and Jason Galanis.

Q. That was in October 2009?

A. October 26, 2009.

Q. Thank you.

You went to meetings, as you testified, in connection with ASSAC in December of 2009, correct?

A. Yes.

Q. And in fact you went to Bermuda in December of 2009, correct?

A. I know I went to Bermuda in December or January. I don't recall.

Q. That was in connection with the Northstar assets, correct?

A. It was in connection with Northstar, yes.

Q. And you went with Jack Doueck?
A. Who?
Q. Jack Doueck.
A. I don't think he was in Bermuda.
Q. You went with Steve Weiss?
A. Was he in Bermuda? I don't think so. I think it was Mr. Hirst and I. He might have been there. I don't recall.
Q. Let me show you what I have marked for identification as Defense Exhibit 1230.
A. Thank you. OK.
Q. You want to take a minute to take a look at that document.
Does that refresh your recollection about the participants at the meeting in Bermuda?
A. It says here that Gary --
MS. HECTOR: Objection.
THE COURT: The question is whether or not the document refreshes your recollection. So what you should do is look at the document. Then when you're done looking at it, put it face down on the table and ask yourself the question, Do you have a new and refreshed recollection having read the document?
THE WITNESS: No.
Q. Now, we talked a little bit about Jason Galanis. You understood that Jason Galanis helped put together some of these acquisitions for Gerova, correct?
A. I'm sorry. Say that again.

Q. I will speak a little more slowly. I apologize.

I believe your testimony was that you knew that Jason Galanis had been involved in some of the acquisitions in connection with ASSAC and the de-SPAC, correct?

A. That was my understanding.

Q. And he was an individual who put together deals, correct?

A. I guess, yes.

Q. And in your experience, people who put together deals seek to get paid fees, correct?

A. Well, if they are working as independent contractors, yes.

Q. And you testified that after you became CEO you relied on Jason Galanis because of his knowledge about the assets that had been acquired, correct?

A. No, I don't think I relied upon him. I think I said I went to him for knowledge.

Q. You went to him for knowledge?

A. Whether I relied on what he said or not, it depends on what you're talking about.

Q. But you said you had to be polite to him, correct?

A. That's for sure.

Q. Because you needed at times to ask him questions, correct?

A. Yes, I needed whatever knowledge he had.

Q. During the time that you were CEO he kept wanting to pursue other deals?

A. What?

Q. During the time you were CEO, Jason Galanis wanted to pursue other deals, correct?
A. He brought other deals to us, yes.
Q. But you're not personally aware of all of Jason Galanis's other deals, correct?
A. That's correct.
Q. And you're not personally aware of who Jason Galanis partnered with in connection with other deals, correct?
A. That's correct.
Q. I want to talk to you about your employment agreement, Government Exhibit 241.

I believe it is still this front of you. I can give you another copy if that would be easier.

MS. HARRIS: Once again, there is a technical delay your Honor.

THE COURT: All right.

Q. It's 241. I can bring you a copy.
A. I have it.

THE COURT: Do you have it, Mr. Manley?

THE WITNESS: Yes, I do.

MS. HARRIS: This is a document in evidence. So I think there is still a delay in publishing it to the jury.

THE COURT: Well, ladies and gentlemen, as has always been done in this court, the exhibits that are received into evidence in the trial will be available to you in the jury room during deliberations. So you will have the physical exhibits available to you.

Go ahead.

BY MS. HARRIS:

Q. You talked about the date of the agreement, correct?

A. Yes.

Q. The date in the document is December 1, 2009?

A. It says dated as of. That's the effective date.

Q. Drawing your attention to the bottom of that first page, paragraph 2A, that section provides that initially for an interim period you had a title to be executive vice president of the company, correct?

A. That's what it says.

Q. And that title lasted until January 23, 2010?

A. That's what it says.

Q. As of January 23, if the shareholders approved, you would become CEO, correct?

A. That's what it says.

Q. Now, in connection with that expectation, you attended the extraordinary shareholder meeting in New York on January 19, 2010.

I am not asking about the document. You can put the document down.

On January 19, 2010, shortly before you became CEO, there was an extraordinary shareholder meeting in New York,

correct?
A. If you say so.
Q. Mr. Manley --
A. You said January 19. I don't have an independent recollection of that meeting.
Q. You recall that the acquisition of the various assets that you testified about on direct were finalized on January 20, 2010, is that right?
A. I don't recall the specific date.
Q. Shortly before you officially became the CEO on January 23rd, you spent several days in New York, correct?
A. That's correct.
Q. And you spent those days meeting with individuals concerning Gerova and ASSAC, correct?
A. I met with them concerning my background.
Q. And that was the day that the shareholders were to vote on the acquisition of the assets, correct?
A. There was a date around that time.
Q. They were also supposed to vote on whether or not you should become the CEO, correct?
A. I believe that's one of the issues. Yes.
Q. And that happened several days before January 23, 2010, correct?
A. I don't know if it happened several days or on January 23rd. I don't recall.

Q. But close in time or on that date, correct?
A. There was a vote.
Q. And you were in New York for that meeting at which the vote took place?
A. I was in New York.
Q. Stephen Weiss was there?
A. Mr. Weiss was there.
Q. And Jason Galanis was there?
A. Mr. Galanis was there.
Q. And you came to learn that the shareholders approved a resolution appointing you CEO of Gerova, correct?
A. That's correct.
Q. And they also approved a resolution appointing you chairman of the board, correct?
A. I think the resolution was vice chairman of the board because that's what the employment agreement said. But I don't know whether the resolution said chairman or not because the original plan was that Mr. Dammerman would be chairman, and then because he had reasons, including the fact that he became chairman of board of AIG, which is very major insurance company, he declined.
So I don't know if the resolution -- if you show it to me, I can tell you what it said. But I don't recall if it said chairman or vice chairman.
Q. Sure. I first want to draw your attention back to

Government Exhibit 241.
A. Yes.
Q. And draw your attention to the top of page 2.
A. Yes.
Q. At the bottom of the first paragraph, the employment agreement says: "If elected by the shareholders during the term of this agreement, the executive also agrees to serve as the chairman of the board or vice chairman of the board of the company without additional compensation."
Is that correct?
A. That's what it says. It also says someplace else vice chairman.
Q. You just talked a minute ago about Mr. Dammerman, correct?
A. I beg your pardon?
Q. You just mentioned to us the name Dennis Dammerman, correct?
A. Yes.
Q. And Dennis Dammerman was a well-known individual in the business world, correct?
A. That's correct.
Q. He had been the CFO of General Electric, correct?
A. That's correct. GE Corporation, which is the parent.
Q. Fair enough.
Originally you were going to bring him in to Gerova as well, correct?

A. He was originally going to be the chairman, yes.
Q. Unfortunately, he had health problems, correct?
A. He had health problems, yes.
Q. And he had other business commitments?
A. He was asked to become the chairman of AIG, which at that time was the largest insurance company in the United States or in the world, I think.
Q. Now, again, drawing your attention to Government Exhibit 241, this employment agreement describes your role as CEO, correct?
A. Yes.
Q. Your understanding is that the CEO is the most senior executive of the company, correct?
A. Yes.
Q. On page 2 it makes clear that you report directly to the board of directors, correct?
A. Yes.
Q. It also makes clear you have responsibility for overseeing and managing the business, correct?
A. I'm sure it says that someplace.
Q. And you have authority, you understood that you had authority for the day-to-day business operations and strategy of Gerova, correct?
A. That's what it says someplace.

(Continued on next page)

BY MS. HARRIS:

Q. I'm not asking just about what it says, Mr. Manley, but what your understanding of what your role was.

A. Yes. Ma'am, I don't understand. You're telling me to draw my attention to a document, then you want my general understanding. You have to be a little clearer.

THE COURT: Mr. Manley, just sit back and relax, listen to the words of the questions, and see if you can answer them. If you don't understand the question, you'll so tell me and tell the jury --

THE WITNESS: Okay, thank you.

THE COURT: -- and we'll have it rephrased. Do we have progress on the document yet?

MS. HARRIS: It is up on my screen at least.

THE COURT: It's working its way toward the jury box.

Q. Fair to say, Mr. Manley, that you took your responsibility seriously, correct?

A. Yes, I did.

Q. As you described on direct, you took steps to take control over the company, correct?

THE COURT: Rephrase the question.

Q. You wanted to bring in a new CFO, correct?

A. Wanted to bring in a CFO, yes.

Q. And you wanted to bring in general counsel for the company, correct?

A. Yes.
Q. You wanted to build your own team, correct?
A. Yes.
Q. You wanted to understand the various assets held by the company, correct?
A. Yes.
Q. You wanted to streamline communication, correct?
A. Well, I wanted to make sure that there were appropriate communications streamlined.
Q. There was, in fact, a lot to do when you first started, correct?
A. Yes.
Q. That first week on the job you were fairly busy, correct?
A. I'm sure I was, yes.
Q. Steve Weiss helped bring up to speed in some respects?
A. Yes.
Q. In fact, on January 20th, you were sent a draft press release about the closing of the acquisition of the assets, correct?
A. I don't recall if I was or was not.
Q. I'd like to show you what's been marked for identification as Defendant's Exhibit 1225.

MS. HARRIS: I'm going to stick with the paper for now, your Honor.

THE WITNESS: Thank you. I see it, ma'am.

Q. Does that refresh your recollection that Mr. Weiss sent you a draft press release for your approval on January 20th?
A. I have no reason to say that this wasn't sent.
MS. HECTOR: Objection.
THE COURT: Basis?
MS. HECTOR: Well, your Honor, what I'm trying to do is she's asking him if it refreshes his recollection, I just don't want him to read from a document again.
THE COURT: All right. As I said to you, when you get a document, Mr. Manley, for the purposes of refreshing your recollection, take your time, look at it, read it, see if it refreshes your recollection. It may well do so. If it does, tell us the new recollection. If it doesn't, tell us that.
THE WITNESS: This does not refresh my recollection.
Q. On January 21st, you led a conference call about the proposed Northstar acquisition; is that correct?
A. I don't recall.
Q. I'm going to show you what's been marked for identification as Defendant's Exhibit 1224. If I can draw your attention to the third paragraph in the middle of the page.
A. I see it.
Q. Does that refresh your recollection that there was a conference call on January 21st that you participated in?
A. No.
Q. Just remind me. The Northstar assets were the assets that

you visited in Bermuda in December, 2009, correct?
A. I know I went there. I'm not quite sure of the date.
Q. But fair to say prior to January 23rd, correct?
A. I believe so.
MS. HARRIS: Excuse me one moment, your Honor.
Q. Isn't it true that on January 21st, you were emailing individuals associated with Gerova about payments that needed to be made?
A. I don't recall.
Q. I'm going to show you Defendant's Exhibit for identification 1228. Mr. Manley, does that refresh your recollection that you were emailing Michael Hlavsa, the CFO to take care of a payment on January 21st, 2010?
A. No.
Q. You testified that there wasn't an official office for Gerova, correct?
A. I testified there was no office in New York -- I'm sorry, in the United States.
Q. During those early weeks, you asked to borrow an office of Albert Hallac, correct?
A. No.
Q. Let me show you what's been marked for identification as Defendant's Exhibit 1230.
MS. HARRIS: I'm sorry. Withdrawn, your Honor.
Q. You know who Albert Hallac is, correct?

A. Yes.
Q. He was associated with Weston, correct?
A. Yes.
Q. And you met with him?
A. I've met with him, yes.
Q. And you've met with Keith Wellner?
A. Yes.
Q. You talked during your direct testimony about hiring a personal assistant.
A. Yes.
Q. You had hired that personal assistant by January 23rd, correct?
A. I don't recall if it was by that date or afterwards.
Q. His name was Michael Grant, correct?
A. Oh, no. That person wasn't the person I was talking about.
Q. Well, Michael Grant is also someone you hired, correct?
A. Gerova hired, yes. We hired him.
Q. I'm going to show you what's been marked for identification as Exhibit 1227. I'm sorry. Actually, does that refresh your recollection that you had hired Michael Grant before January 23rd, 2010?
A. No, I hired him -- it would have been effective January 23rd.
Q. But as of January 23rd, he was working at Gerova, correct?
A. I know he was hired. The date is whatever the date is.

Q. Well, you --
A. It was seven years ago. I can't remember the exact dates, ma'am.
Q. You referred to him in your communications as "your new assistant", correct?
MS. HECTOR: Objection.
THE COURT: Is this document in evidence?
MS. HARRIS: No. Sorry, your Honor.
THE COURT: So sustained.
MS. HARRIS: If you could put the document down, Mr. Manley. Thank you.
Q. You arranged for Mr. Grant to visit the Stillwater assets, correct?
A. Yes.
Q. To go to meetings in Florida, correct?
A. Meetings in Florida? On Stillwater?
Q. Correct. I'm asking, you arranged for Mr. Grant to investigate the Stillwater assets, correct?
A. Yes.
Q. Along with Mr. Nag, correct?
A. Yes.
Q. Tore Nag was the COO at the time of Gerova?
A. He became COO, yes.
Q. And you arranged for them to visit the Stillwater assets on January 25th, correct?

A. I don't recall the date, ma'am.
Q. Drawing your attention now to Defendant's Exhibit 1227 marked for identification as Defendant's Exhibit 1227.
A. I have it, ma'am.
Q. Just drawing your attention to the middle of the page.
A. Yes.
Q. Does that refresh your recollection that Mr. Nag and Mr. Grant were visiting Stillwater on Monday, January 25th?
A. I know they were supposed to visit them, I don't know the date, ma'am.
Q. Okay, thank you. Shortly after you became CEO, you arranged for a meeting in Florida, correct?
A. I arranged for meetings in Florida, yes ma'am.
Q. And this particular meeting was a two-day meeting in early February, 2010, correct?
A. I don't know what meeting you were talking about. There were a number of meetings in Florida.
Q. You arranged for a two-day meeting in early February, 2010, correct?
A. I arranged for a meeting in Florida in February, 2010, yes.
Q. And one day of that meeting was going to be devoted to Stillwater, correct?
A. That sounds correct.
Q. And one day was going to be devoted to the acquisition of hedge funds, correct?

A. Hedge funds, yes. I don't think I --
Q. And again, is your testimony that you didn't officially take over until January 23rd, correct?
A. That's correct.
Q. On January 24th, you sent Mr. Hlavsa an expense report, correct?
A. I know I sent an expense report, I don't know if it was on the 24th or what date.
Q. You sent him an expense report for your expenses incurred in connection with your travel to New York before you became CEO, correct?
A. Show me the document and I can tell you what it said in the expense report.
MS. HARRIS: Your Honor, I'm marking for identification Defendant's Exhibit 1222.
THE WITNESS: Thank you.
Q. So the record is clear, if you can take a look at the document, I'm asking if it refreshes your recollection that you sent Mr. Hlavsa an expense report on January 24th.
A. Doesn't refresh my recollection as to the date.
Q. I'm sorry. If you could put the document down. But is your memory that you did send him an expense report, correct?
A. That's correct.
Q. You have a memory of sending him an expense report for your travel expenses to New York, correct?

A. Yes.
Q. And that was your travel before January 23rd, correct?
A. Whatever it says, it says. I don't know. You told me to put the document down.
Q. I want to talk to you about the Stillwater assets.
A. Yes.
Q. You spent a fair bit of time focusing on the Stillwater assets during your tenure at CEO, correct?
A. I spent time, yes.
Q. And there became a problem with the valuation of those assets, correct?
A. There was a process of evaluation. I don't know if there was a problem, but there was a process.
Q. Well, as CEO, you needed to help secure an audit, a certified audit for those assets, correct?
A. I think the agreement itself talked about a process to assess the value of them. I did not really have a very big part in that.
Q. And that process wasn't complete by the time you were terminated, correct?
A. That's correct.
Q. I want to talk to you a little bit about your compensation. Drawing your attention to Government's Exhibit 241.
A. I have it, ma'am.
Q. I think you testified on direct, your salary, your annual

salary was going to be 650,000, correct?
A. That's correct.
Q. And you were also entitled to a performance bonus, correct?
A. I'm sure that's correct. There it is, yeah, I see it.
Q. In paragraph 3(d), do you see it?
A. I see it.
Q. And that performance bonus could be up to 100 percent of the base salary, correct?
A. That's correct.
Q. So assuming you got the maximum, you could double your salary, correct?
A. Yes.
Q. You talked about the stock deal that you also worked on.
A. I'm sorry. Talked about what?
Q. The stock purchase agreement, the share purchase agreement, correct?
A. Yes.
Q. Now this is Government's Exhibit 640.
A. I have that.
Q. Thank you. This agreement is between you, Marseille Capital, and ASSAC, correct?
A. That's what it says.
Q. And Marseille Capital is an entity in which you're a member of, correct?
A. Yes, ma'am.

Q. And you're, in fact, the managing member of Marseille Capital, correct?
A. Yes, ma'am.
Q. And you're the sole manager of Marseille Capital, correct?
A. Sole manager?
Q. Sole manager, correct?
A. Yes, ma'am.
Q. The registered address for Marseille Capital is your home address, correct?
A. Yes, ma'am.
Q. Which is 2475 Marseille Drive?
A. Palm Beach Gardens, Florida.
Q. Excuse me? Marseille Drive is your home address, correct?
A. Yes, that's correct.
Q. This is essentially a family investment entity, correct?
A. I'm sorry, what?
Q. Marseille Capital is a family investment entity, correct?
A. Well, my son and I own it, yes.
Q. Okay. And the beneficiaries are you and your family members, correct?
A. Well, I don't if I would use the phrase "beneficiary". My son and I would benefit from it, yes.
Q. It's a family investment, correct?
A. With my son and I. It's not the whole family, it's just my son and I.

Q. The share purchase agreement gave you the right to buy 20 million worth of Gerova shares, correct?
A. That's what it says.
Q. What's your understanding, Mr. Manley?
A. My understanding is that the company would sell to Marseille Capital a number of shares which were number 5 million, so and so, that were priced at a certain amount which were equal to $20 million, but I can't tell you whether or not the shares were worth that or not. That's the question you asked.
Q. Let's break it down a little bit. Okay? Government's Exhibit 640 provides that you have the right to buy the shares at a price of $3.50 per share, correct?
A. It provides that Marseille Capital has the right to buy the shares at a price, $3.75, I think.
Q. $3.75. I apologize. And the market price for shares at that time was significantly higher, correct?
A. I have no idea.
Q. You're a fairly astute businessman, right, Mr. Manley?
A. Let me just -- let me see if I can answer that question like you say. January 1st, 2010. That's the date that you want to know the market price of ASSAC?
Q. Well, isn't it true, Mr. Manley, that the market price was $7.50 at the time?
A. I have no recollection.

Q. You negotiated the share purchase agreement, correct?
A. No.
Q. Someone did on your behalf, correct?
A. Mr. Rosetto negotiated it.
Q. And is your understanding that the $3.75 share price was a discount on the market price of the shares, correct?
A. No.
Q. You had no understanding one way or the other?
A. That's correct.
Q. That you were getting a good deal, bad deal, or no deal?
A. If it turned out after five years that the company did well, it would have been a good deal.
Q. For example, if the price had been $7.50 per share, you would have been getting a 50 percent discount, correct?
A. On December 31st, 2015.
Q. And $20 million divided by $3.75 turns out to be 5,333,000?
A. 333,333.
Q. I dropped the last few threes.

THE COURT: All right. Ladies and gentlemen, let's take our mid-morning break. Please do not discuss the case among yourselves or with anyone. Keep an open mind. We'll be back in action in 10 minutes. Thank you.

One more thing, ladies and gentlemen. It was pointed out that I might have used a double negative yesterday. I'm not sure that I did. But as I told you yesterday, Mr. Hirst was neither an investment advisor nor a registered investment advisor. Thank you.

See you in 10 minutes.

(Recess)

THE COURT: Ms. Harris, you may continue.

MS. HARRIS: Thank you, your Honor.

Before we left off, you were talking about the stock price of Gerova in January, 2010. I want to have you look at -- and I'm going to do this on the screen because I only have one paper copy, but I have it available.

Government's Exhibit 900, your Honor, which is already in evidence with a stipulation.

BY MS. HARRIS:

Q. Have you had a chance to look at the screen?

A. I see it, yes.

MS. MERMELSTEIN: I don't believe this is in evidence because I don't believe the stipulation has yet been read. So it is coming into evidence, but I don't think it has been yet.

THE COURT: You're offering it and there's no objection?

MS. HECTOR: No objection.

THE COURT: Exhibit 900 is received.

(Government's Exhibit 900 received in evidence)

BY MS. HARRIS:

Q. That first page that you're looking at lists, pursuant to

its title, the Gerova price and volume, listing the price for the stock, correct?
A. I know what it says. You know.
Q. Well, there's a column of dates on the left, correct?
A. Right, there's a column of dates on the left, yes.
Q. And it lists the volume, correct?
A. It lists the numbers under "volume" and numbers under "closing price".
Q. You understand closing price to be the closing price of the share, correct?
A. I assume that's what it means.
Q. I'm going to draw your attention to the fifth page of that exhibit, and drawing your attention to the date 1/22/2010. That's January 22nd, 2010, correct?
A. I see that, ma'am.
Q. The price per share on January 22nd, 2010 is $7.46 per share, correct?
A. It says for 9,500 shares traded on that date, closing price is $7.46.
Q. As we were discussing, under your share purchase agreement you got the right to buy shares at $3.75 per share, correct?
A. That's what the document says.
Q. And that's your understanding, correct?
A. Yes, subject to certain restrictions.
Q. Correct. So if you could have sold stock on that day, that

stock would have been worth double, correct?
A. Well --
Q. Plus or minus a few pennies?
A. Depends on the price that would have been paid. If I could have sold stock on that date for $7.46, then it would have been worth twice as much. However, the question is misleading because, A, under the agreement, I couldn't have sold the stock because I didn't have them, and even if I had them, I couldn't have sold them because there were restrictions. In addition, it depends on the number of shares you're going to sell, because the prices depended upon a willing seller and a willing buyer, so I can't tell you what the price would have been.
Q. Thank you.
A. You're welcome.
Q. But you bought the stock -- or you had the right to buy the stock for $3.75 per share, correct?
A. That's what the document says.
Q. And you had the right to get $20 million worth of stock, correct?
A. No. I had the right to buy the shares for a note of $20 million. I did not know what the worth of the stock was on that date.
Q. Let's talk about that note. That note is essentially a loan, correct?
A. Well, the note's not attached, so what you're -- the note

would have been Exhibit B. So if you -- you have to look at the note because the stock purchase agreement -- but the note itself is, I believe it said, Exhibit B. So I don't have the note in front of me.
Q. I'm just asking your understanding, Mr. Manley.
A. Of what the note was? The note was for $20 million on a nonrecourse basis.
Q. I just want to break it down to simpler terms. A note is essentially a loan, correct?
A. Yes.
Q. You were giving essentially an IOU to the company for $20 million, correct?
A. No, I was not, Marseille Capital was.
Q. I'm sorry, Marseille Capital was.
A. It essentially owed the company $20 million, subject to certain things, but on the nonrecourse basis, so there's no real liability.
Q. Right. And nonrecourse means that if Marseille Capital didn't pay the company back, they couldn't be held responsible, correct?
A. It's paragraph 2.4 of Exhibit 640 that says, "Notwithstanding anything to the contrary express or implied contained in this agreement, except with respect to the pledge of the subject shares, neither Marseille nor Manley or any of their other assets or property shall be personally liable

pursuant to this agreement."
Q. I just want to -- in plain English, that means Gerova couldn't sue Marseilles Capital to get that $20 million, correct?
A. What I read was plain English, but the answer is, Gerova could have sued -- done anything if it wanted to. I don't know if they should have, but they could have, yeah. I mean, I -- you asked a question that's -- I'm trying to answer the best I can.
THE COURT: No.
THE WITNESS: I'm sorry.
THE COURT: Next question.
Q. And in connection with the shares, let's talk about the shares you're entitled to buy in the share purchase agreement. Those shares were actually issued to you, correct?
A. I don't recall.
Q. Well, in March, 2010, the stock transfer company issued Marseilles Capital's shares, correct?
A. I don't recall.
Q. I'd like to show you what's been marked for identification as Defendant's Exhibit 341.
A. I see it now.
Q. Does that refresh your recollection that the shares were issued to Marseilles Capital in March, 2010?
A. No.

Q. I'm now going to show you what's in evidence as Defendant's Exhibit 307.

MS. HECTOR: Defense Exhibit or --

MS. HARRIS: It's Defendant's Exhibit 307 subject to a stipulation, but the stipulation has not yet been entered, and I offer it now, subject to the stipulation.

MS. HECTOR: May I just pull up --

THE COURT: Yes. Pause. Take a look. See if there's an objection.

MS. HECTOR: Yes. We have no objection to this one.

THE COURT: Defendant's Exhibit 307 is received into evidence.

(Defendant's Exhibit 307 received in evidence)

BY MS. HARRIS:

Q. That document is a letter from Gerova, correct?

A. That's what it purports to be, yes.

Q. And to Continental Stock Transfer Company.

A. Yes.

Q. A letter authorizing the issuance of shares, correct?

A. It authorizes a transfer of shares. I don't see it says anything about issuance.

Q. And turn --

A. If you could point to me the section which says "issuance".

Q. If you could turn to page 2. On Schedule One, Marseilles Capital is referenced, correct?

A. I'm sorry. Can you repeat that, please?
Q. Marseilles Capital is referenced on page 2, correct?
A. Yes, it's referenced on page 2.
Q. And that correspondence was in March, 2010, correct?
A. I'm sorry. Say that --
Q. That letter is from March, 2010, correct?
A. It's March 12th, 2010. It says 12 March 2010 on the front page.
Q. In connection with the shares, you had to sign a certification; isn't that right?
A. I have to do what? I'm sorry.
Q. You have to sign a certification, correct? You can put the document down, Mr. Manley, I'm asking from your memory.
A. I don't recall.
Q. I'm going to show you what's been marked for identification as Defendant's Exhibit 342.
MS. HARRIS: I want to make sure it was only for the lawyers, your Honor.
Q. I actually think it's two copies of the same document, so if you could just look at the first three pages.
A. I see that.
Q. Does that refresh your recollection that you signed a certification in connection with the issuance of shares to Marseilles Capital?
A. Doesn't refresh my recollection.

Q. Isn't it true that Mr. Weiss sent a counsel's letter to Continental in connection with the issuance of shares to Marseilles Capital?
A. I don't know what Mr. Weiss did.
Q. Do you know that Mr. Weiss told Continental that the shares to Marseilles Capital would be exempt from the registration requirements? Are you aware of that?
MS. HECTOR: Objection.
THE WITNESS: I'm not aware of what Mr. Weiss did.
THE COURT: Basis?
MS. HECTOR: Hearsay.
THE COURT: I'll let the answer stand.
Q. You're not aware of any board resolutions before March, 2010 authorizing the issuance of shares to Marseilles Capital, are you?
A. Unless there was a board resolution before I got there. I'm not aware. Well, you say "the employment agreement" -- I don't know. I don't know.
Q. Thank you. You can put the document down.
I want to talk to you about the consulting agreement, the Shahini consulting agreement.
MS. HARRIS: If I could have one moment, your Honor.
THE COURT: Sure.
Q. Now, today you're telling the jury you didn't sign it, correct?

A. Yes.
Q. And you speculated for the jury on some reasons why you think you didn't sign it, correct?
A. I answered some questions.
Q. But you haven't always been so sure; isn't that right?
A. I haven't always been so sure?
Q. About whether or not you signed the consulting agreement, correct?
A. I know I didn't sign it.
Q. Well, prior to today, you'd been interviewed several times by the government attorneys, correct?
A. That's correct.
Q. And you met with them last summer, correct?
A. Yes.
Q. In July, 2015?
A. That stands correct.
Q. That was before the charges were filed in this case, correct?
A. I don't know.
Q. And you met with them several times since then, correct?
A. I met with them -- yes, I met with them.
Q. Back in July, 2015, you met with them under the terms of what we call a proffer agreement, correct?
A. That's what my lawyer called it.
Q. And in that agreement, the government promised not to use

the statements you made at that meeting against you, correct?
A. You'll have to -- the agreement said whatever it said, ma'am.
Q. And it was your understanding at the time that it was important to tell the truth, correct?
A. Yes, ma'am.
Q. And at that first meeting, you said you didn't remember if you had signed it, correct?
A. I don't recall that. I don't recall ever saying that.
Q. In fact, you told them that the only way you might have signed it is if Stephen Weiss told you to, correct?
A. I don't recall what I said --
Q. I'm going to show you --
A. -- at that meeting.
Q. -- what is Government's Exhibit 3511-2.
A. Yes, ma'am.
Q. I'm sorry. Before you look at that document, and at that meeting, there was someone taking notes, correct?
A. I'm sorry, what?
Q. At that meeting, there was an individual who took notes, correct?
A. I think somebody took notes, yes.
Q. Now drawing your attention to Government's Exhibit 3511-2, if you could look at page 3 --
MS. HECTOR: Your Honor, that's not a Government's

Exhibit.

MS. HARRIS: I'm sorry.

THE COURT: What is it marked as?

MS. HARRIS: 3511-2.

THE COURT: Are you going to be offering this document into evidence?

MS. HARRIS: I am not.

THE COURT: So this is to ask him to refresh his recollection?

MS. HARRIS: Correct. But it's a multi-page document I just draw his attention to one page.

THE COURT: To page 3, correct?

MS. HARRIS: Correct.

THE COURT: All right. Mr. Manley, if you would take a moment, read the document, and see whether it refreshes your recollection on the subject you were asked about. All right?

THE WITNESS: Yes. But I don't know what the question is. Refresh my recollection on what?

THE COURT: Go ahead.

MS. HARRIS: I'll be happy to help out.

Q. Drawing your attention to page 3, and in the middle of the page, if you could take a moment to read that page.

A. The whole page?

Q. You could read the middle of the page, several lines in the middle of the page.

A. Okay.

THE COURT: Turn it face down. What's your question?

Q. Does that refresh your recollection that you told the government that you might have signed it if Mr. Weiss told you to?

A. I did not say that.

Q. Isn't it true that at the same meeting you told the government that Mr. Bianco gave you a stack of documents to sign on the date of your termination, correct?

A. Mr. Bianco? Want me to read it?

Q. No, I'm asking you, you testified --

THE COURT: The question is, did you tell the government what Ms. Harris just referenced in her question?

THE WITNESS: I don't recall that.

Q. Isn't it true that you told the government that it was "possible that you had signed the Shahini consulting agreement" --

THE COURT: Let me see you at sidebar, Ms. Harris.

(Continued on next page)

(At the sidebar)

THE COURT: It appeared to me, Ms. Harris, you were quoting from a document not in evidence, which is absolutely improper and you know it's improper.

MS. HARRIS: Your Honor, I do not intend to quote from it, and I don't intend to --

THE COURT: No. You did quote from it. That's why we are at the sidebar. That's improper.

MS. HARRIS: I apologize. In truth, it is an effort to make sure I use the right language.

THE COURT: It's not the right language. You're asking him a question about his recollection. You're not supposed to be using language because the documents is not in evidence.

Now if you would like to offer it in evidence, that's a different story.

Would you like to offer it?

MS. HARRIS: I am not going to offer it.

THE COURT: You're welcome to.

MS. HARRIS: I'm not going to offer it. I don't think I would be entitled to under the rules.

THE COURT: You might find that there isn't an objection. I don't know. But if you don't want to offer it and it's not evidence, you know the rules quite well.

MS. HARRIS: Your Honor --

THE COURT: Don't let it happen again.

MS. HARRIS: I won't.

(Continued on next page)

(In open court)

THE COURT: Ladies and gentlemen, the last question was stricken.

Go ahead.

BY MS. HARRIS:

Q. I want to talk to you about your termination, Mr. Manley.

You testified that at the April 7 board meeting Mr. Hirst made the motion for your termination. Is that your testimony?

A. Yes.

Q. It's your recollection that Jack Doueck seconded the motion, correct?

A. That's my recollection.

Q. And you understood that part of the reason for your termination was that other individuals at Gerova believed you had been dishonest about your background, correct?

A. No.

Q. You were told that they thought you had not disclosed all of the relevant information about your background, correct?

A. No.

Q. You understood that from Joe Bianco?

A. No.

Q. Did you at some point come to an understanding that certain individuals at Gerova were unhappy because they did not think you had been honest about your background?

A. No.
Q. You testified on direct about your association with a bank in California, correct?
A. Yes.
Q. You had an understanding that that was part of the reason you were fired, correct?
A. I did not have that understanding.
Q. Someone communicated to you that they felt they did not have all the relevant information about your tenure with the bank in California, correct?
A. I testified that Mr. Hirst said that. That's what I testified to.
Q. Thank you.
As I think I just asked, Mr. Doueck seconded the motion for your termination, correct?
A. That's what I just said. Yes.
Q. Then you were asked to leave the room, correct?
A. I left the room, yes.
Q. The board then voted on the termination as a group, correct?
A. I have no idea what they did when I left.
Q. Mr. Bianco came to advise you what had happened after you left the room, correct?
A. No.
Q. You learned after you left the room that you had in fact

been terminated, correct?
A. No.
Q. You learned in the room that you had been terminated?
A. No.
Q. When did you learn that you had been terminated?
A. I didn't learn it.
Q. You knew you were terminated, right, Mr. Manley?
A. The motion was made. If I recall, the meeting was suspended with respect to me. I then went to my room and I was told that somebody was going to come up to talk to me to see if we could resolve it. That's all I know.

I don't know if they took a vote or not.
Q. Mr. Bianco then came up to your room, correct?
A. That's correct.
Q. He worked with you to finalize termination papers, correct?
A. That's correct.
Q. It's fair to say you had an understanding at that point that you were being terminated, correct?
A. At that point the board wanted to fire me. Whether I was terminated -- it's fair to say. OK.
Q. I want to draw your attention to Government Exhibit 242.

Actually, before we talk about the exhibit, the terms of your separation agreement that you discussed with the government provided for your receiving $40 million, correct?
A. No.

Q. Excuse me. $40 million over 40 months, correct?
A. No.
Q. Let's look at -- $4 million. I apologize. It's been a long morning. 4 million.
A. Yes, ma'am. 4 million.
Q. $4 million over 40 months. And the terms of your separation also provided that you would get health insurance for four years, correct?
A. Health coverage. It said something about health coverage.
Q. And I think you testified that you were also entitled to an additional $900,000, approximately, correct?
A. No.
Q. You got additional money in addition to the promise of $4 million, correct?
A. I got car insurance under the terms of the separation agreement of $1,000 a month, I was supposed to get, and I was supposed to participate in the company's health plans.
Q. So this agreement contemplated that even though you weren't going to work any longer for Gerova, you would still get $4 million, correct?
A. The agreement contemplated that in satisfaction of the claims I had under my employment agreement that I was supposed to be paid a certain amount of money over a certain time period.
Q. You were going to be paid that amount of money, correct?

A. Supposed to be, yes.
Q. You had worked at that point for Gerova for approximately 70 days, correct?
A. Yes, ma'am.
Q. You also signed with Gerova a consulting agreement, correct?
A. Yes.
Q. Under that consulting agreement you also had the right to get additional shares, correct?
A. It was a consulting agreement that had some provisions in it.
Q. Now, you didn't get all of these benefits that you were promised under the termination agreement, correct?
A. That's correct.
Q. You sued the company to try to recover those benefits, correct?
A. That's correct.
Q. You tried to recover the $4 million provided for in the separation agreement?
A. That's correct.
Q. You never got the $4 million?
A. That's correct.
Q. You didn't get that $20 million worth of stock that you had been promised originally under the share purchase agreement?
A. I was not promised the stock. You keep on confusing

Marseilles and me. Marseilles is different than me. But the answer is I did not get the stock.

Q. Just so we are clear, Marseilles is you and your son, correct?

A. Now it is, yes.

Q. And you didn't get the stock that was promised to you in the consulting agreement, correct?

A. Yes, that's correct.

MS. HARRIS: I have no further questions, your Honor.

THE COURT: Any redirect?

MS. HECTOR: Yes, your Honor.

REDIRECT EXAMINATION

BY MS. HECTOR:

Q. Mr. Manley, who negotiated your compensation arrangement with Gerova?

A. Bruce Rosetto.

Q. When you explained your employment background, you explained that you served in executive-level positions in various entities, correct?

A. Yes.

Q. In your experience, were the terms of your compensation that were negotiated by Mr. Rosetto typical for those of a CEO of a public company at the time?

A. The terms were typical. The amounts were less than normal.

Q. Less than normal?

A. Yes.
Q. You were asked multiple questions about the share purchase agreement that was entered into in connection with your employment, correct?
A. Yes, ma'am.
Q. Now, in response to that you referred to that agreement as an incentive plan of some sort. What do you mean by that, incentive?
A. Well, when an executive is hired to become a CEO of a company, there is financial incentives for them to make decisions for the long-term benefit of the company. And it is not just to get a salary. It is to build a successful company over a number of years. And that's an incentive, and it's very typical in various corporate fields.
Q. How did you understand the share purchase agreement that was negotiated to be an incentive for you?
A. Well, because if things worked out, December 31, 2015, and the company was really doing very well, hopefully the share price would be in excess of $20 million for that number of shares and that would be the incentive.
Q. And if that were to come to be, would you owe that $20 million?
A. Well, no. What happens is -- let's assume the shares were 20 million and one dollar they were worth. So the company would take back the 20 million and I would make one dollar.

Q. So, in essence, it would be netted out at that point?
A. Yes.
Q. And so it's fair to say it was an incentive for you to grow the company in a productive fashion?
A. And to think long-term. To think long-term.
Q. Was it your understanding, having experience as an executive level in various companies, that agreements like that were also typical for executives at that level?
A. Very, very common.
Q. Just to be clear, the shares that you were given were restricted, correct?
A. That's correct.
Q. So you can sell them?
A. For sale and also when they would vest to. It's not like first day I had shares. They had to vest over time periods.
Q. Prior to when you officially became the CEO of Gerova on January 23, 2010, did you enter into any contracts on Gerova's behalf as the CEO?
A. No, not that I can recall.
Q. Mr. Manley, are you generally a careful person when you sign documents?
MS. HARRIS: Objection.
THE COURT: I will allow it.
A. No.
Q. You're not?

A. No.
Q. Now, Ms. Harris asked you questions about meeting with the U.S. Attorneys.
Do you remember that?
A. Yes.
Q. And she asked you questions about your reaction to seeing Government Exhibit 250 -- I'm sorry, not 250.
Yes. I'm sorry. 250.
A. 250?
Q. Yes. The consulting agreement that I have shown you here today, that's Government Exhibit 250. If you want to pull it out of your pile and we can pull it up on the screen.
A. Oh, OK. I see it.
Q. Do you remember being shown this document for the first time by the U.S. Attorney's Office?
A. Yes.
Q. Isn't it true that your reaction was that it was not your signature?
A. That's what I said over and over again.
Q. Isn't it true that you provided the U.S. Attorney's Office with similar rationale that you did here today, that, number one, it wasn't your signature; number two, you had no recollection of Ymer Shahini or doing any business in the Czech Republic; and number three --
MS. HARRIS: Objection. Leading, your Honor.

THE COURT: I am going to allow it on redirect.
Q. Number three, that the date of the agreement was before you effectively started your role as CEO?
A. That's correct.
Q. Isn't it also true that you told the U.S. Attorney's Office at that time that the only way you would have actually signed this agreement was if it was unknowing?
A. That's the substance. I didn't sign it.
MS. HECTOR: Can I have a moment?
Nothing further, your Honor.
THE COURT: You may step down.
THE WITNESS: Thank you your Honor.
MS. HARRIS: Your Honor, I have just one question.
THE COURT: Ladies and gentlemen, the usual order is there is direct examination, then cross-examination, and the party who calls the witness can conduct a redirect examination. As the judge presiding I have the discretion to in some instances allow a further examination.
I will allow Ms. Harris.
MS. HARRIS: On further consideration, I have no further questions.
THE COURT: You may step down. Thank you.
(Witness excused)
THE COURT: Call your next witness.
MR. BLAIS: At this time we have two stipulations that

we would like to read.

THE COURT: All right.

MR. BLAIS: I am reading from what has been marked for identification as Government Exhibit 1501.

"It is hereby stipulated and agreed, by and among the United States of America, by Preet Bharara, United States Attorney for the Southern District of New York, Brian Blais, Aimee Hector and Rebecca Mermelstein, Assistant United States Attorneys, of counsel, and Gary Hirst, the defendant, by and with the consent of his attorneys, Michael Tremonte and Justine Harris, that:

"On April 26, 2007 Jason Galanis was barred by the United States Securities and Exchange Commission (the "SEC") from acting as an officer or director of a publicly traded company for a period of five years.

"It is further stipulated and agreed by and among the parties that this stipulation is admissible as a government exhibit at trial."

And it's dated September 5, 2016 and signed by the parties.

At this time, the government offers Government Exhibit 1501.

MS. HARRIS: No objection.

THE COURT: All right. Received.

(Government's Exhibit 1501 received in evidence.)

MR. BLAIS: I am now reading from Government Exhibit 1511, which has the same lead-in, indicating the parties' names.

The parties agree that:

"1. Government Exhibits 500 through 508 are true and correct copies of records that were created, kept and maintained in the ordinary course of business of Continental Stock Transfer and Trust Company and were created by persons with knowledge of, or created from information transmitted by persons with knowledge of, the information shown, and were created at or near the time the information became available.

"It is further stipulated and agreed by and among the parties that this stipulation and the government exhibits set forth herein are admissible as government exhibits at trial."

It's dated September 11, 2016 and signed by the parties.

At this time, the government offers Government Exhibits 500 through 508 and Government Exhibit 1511, which is the stipulation.

THE COURT: Any objection?

MS. HARRIS: No objection.

THE COURT: Received.

(Government's Exhibits 500-508, 1511 received in evidence.)

MS. HECTOR: The government calls Michael Hlavsa.

(Continued on next page)

MICHAEL HLAVSA,
called as a witness by the government,
having been duly sworn, testified as follows:
THE DEPUTY CLERK: State your name and spell it for the record please.
THE WITNESS: My name is Michael, first name, M-I-C-H-A-E-L. My last name is Hlavsa, and that's spelled H-L-A-V, as in Victor, S as in Sam, A.
THE COURT: You may inquire.
DIRECT EXAMINATION
BY MS. HECTOR:
Q. Good afternoon, Mr. Hlavsa.
A. Good afternoon.
Q. In 2010, what were you doing for a living?
A. I was the chief financial officer for Gerova Financial Group.
Q. What were your general responsibilities as the CFO?
A. I was responsible for recording the financial transactions for the organization along with preparing the financial statements for regulatory filings.
Q. When you say "regulatory filings," what do you mean by that?
A. Gerova Financial Group was a publicly traded organization and had responsibilities to file with the Securities and Exchange Commission.

Q. Who was your boss?
A. I reported to two people. One was the president of the company, a gentleman by the name of Gary Hirst, and the other one would have been chief executive officer. In 2010 there were a few of them.
Q. You mentioned an individual named Gary Hirst as president of the company. Do you see that individual in the courtroom today?
A. I do.
Q. Could you identify him by an article of clothing he is wearing or his position at a table?
A. He is in the center position of the table.
THE COURT: Of which table?
THE WITNESS: Of the defense table.
THE COURT: The first table or the second table?
THE WITNESS: The second table.
THE COURT: Thank you.
Identification noted.
BY MS. HECTOR:
Q. Mr. Hlavsa, in September of 2010, what if anything did you discover about a man named Ymer Shahini?
A. In September of 2010, I was presented a document that was called a consulting fee. The consulting fee was between an individual by the name of Ymer Shahini and Gerova Financial Group.

Q. Was that September 2010 that you were presented with that consulting agreement?
A. Yes, it was. To the best of my recollection, yes.
Q. At some point did you learn that shares of Gerova had been issued to that individual?
A. I did.
Q. Did you come to learn how many shares?
A. The shares that were issued to that individual is 5,333,333 shares.
Q. Did you learn who had caused those shares to be issued to Ymer Shahini?
A. I did.
Q. Who was that?
A. There was an instruction letter given to our stock transfer agent that was signed by Gary Hirst, the president of the company.
Q. Prior to you discovering that shares had been issued to Ymer Shahini, 5,333,333 shares, had Mr. Hirst told you those shares had been issued?
A. He had not.
Q. Mr. Hlavsa, I am going to ask you more questions about your time at Gerova, but first let me take a step back and talk about your personal background.
Where did you attend college?
A. I attended two colleges, both in the Buffalo, New York

area. The first one was a community college called Erie Community College. The second one was Canisius College, which was a four-year university.

Q. What year did you graduate from Canisius?

A. I graduated in 1975.

Q. Was your degree in a particular field?

A. A bachelor of science degree and a major in accounting.

Q. Following your graduation up until this time, have you been primarily employed in a particular field?

A. Primarily in the financial field, yes.

Q. Could you briefly provide us an overview of your career path prior to your work at Gerova?

A. Certainly. I will try to make this brief.

Upon graduation, I went to work for a local CPA firm, certified public accounting firm, which I spent a couple of years. Subsequent to that, I worked for a group of construction companies as their controller.

Then I joined what is termed to be the casino industry. I worked for 12 years in Atlantic City in a variety of internal audit and financial positions for the organizations of Caesars World, Tropicana and Trump Plaza.

I left Atlantic City and went to Las Vegas, where I was the vice president of finance and administration for the Sands in Las Vegas, which is now the Venetian. Then worked for another company that developed riverboat casinos called Lady

Luck Gaming Corporation.

I left them about in 1997 or so. I didn't put any dates in the periods of time. I left in 1997 and moved to Florida. Was part of a project in Miami that actually had a casino on a vessel that went into international waters. Sold my interest in that. Was recruited to be CEO of another project which had just filed for bankruptcy, and was with them for a number of years.

Then in 2004, I formed a consulting company whereby I provided interim executive management positions, primarily for the casino industry in tribal communities acting as chief financial officer, acting as interim general manager, those type of positions. Those were all prior to and subsequent to my time with Gerova.

Q. Do you hold any professional licenses?

A. I have, and I will clarify this. I have received the designations of both a certified public accountant, which is being licensed in the State of New York, but I am not current and I don't practice because I haven't met the continuing education requirements.

I also received a designation of certified internal auditor, which is actually a test that's provided by an independent -- it's not a state regulatory body. It's the institute of internal auditors, but it's a regulatory designation. I have that also.

Q. Now, let's advance your attention to the spring of 2007. Around that time, did you learn of an entity called Asia Special Situation Acquisition Corporation?
A. I did.
Q. What is Asia Special Situation Acquisition Company, or ASSAC for short?
A. It was a company formed as a special purpose acquisition company, commonly referred to as a SPAC or a blank check company.
Q. What is a SPAC?
A. A SPAC is an entity that does an initial public offering, raises some capital, and then uses its public status and its capital to be able to merge into typically a private company that wants to be public and needs that additional capital.
Q. Now, how did you come to learn of the specific entity we are talking about, ASSAC?
A. I was introduced to the opportunity by a man by the name of Jason Galanis.
Q. How did you know Jason Galanis at that time?
A. A couple of years prior to 2007, I was involved in a transaction whereby I was helping a friend of mine sell his controlling interest in a company to another gentleman and Jason Galanis was advising the other gentleman.
Q. Do you recall approximately when that was?
A. I think it was a couple of years prior. I would say 2005.

Q. Just to be clear, did that transaction have anything to do with ASSAC?
A. Nothing.
Q. Did you keep in touch with Mr. Galanis following that transaction?
A. We did.
Q. Now, prior to Mr. Galanis reaching out to you in 2007 about ASSAC, did you learn of any issues that Mr. Galanis had with the Securities and Exchange Commission?
A. I did.
Q. How did you come to learn that?
A. I recall that we were beginning to discuss a business relationship and talked about potentially doing something together, and I Googled his name. And I did that because coming from the very highly-regulated casino industry, you're not allowed to be associated with anyone that had any criminal past or a convicted felon. So anybody that I had a potential business dealing with, I immediately tried to research them and find out as much as I could about that individual.
I remember seeing some articles about Jason Galanis, learning about that he had some issues with the Securities and Exchange Commission, and that was about in 2005.
Q. Again, focusing on 2007 when Mr. Galanis reaches out to you about ASSAC, how did he describe the opportunity?
A. What he described to me is this organization needed a chief

financial officer and it would go through an initial public offering and that company would go and look at other companies to acquire. And if everything was successful, then I would receive some shares in ASSAC and most likely that my responsibilities would end when the company acquired another company.

Q. At the time, did he describe what field the acquisitions were potentially going to be in?

A. Yes. The chairman of the board was a lady by the name of Angela Ho. Angela Ho was a daughter of a gentleman by the name of Stanley Ho, who at the time owned the only casino license in a place called Macau, which now has a lot of casinos, but at the time he had the monopoly on the casino license. So he was a very influential man in Asia through that relationship.

Q. Did Mr. Galanis explain to you why he thought you would be the right person to potentially play a role at ASSAC?

A. A couple of reasons. One is I did have some public reporting responsibilities, and secondly, Angela Ho at the time was talking about perhaps getting into a gaming-related business, maybe not ASSAC certainly, but some other type of business.

Q. Now, after Mr. Galanis told you about this potential opportunity, what was your reaction?

A. I thought it was a great opportunity.

Q. Did you agree to perform a role in ASSAC?

A. I did.
Q. What was that role?
A. I was the chief financial officer and I was also on the board of directors and acted as the board's secretary.
Q. What does it mean to act as the board's secretary? What is the responsibility?
A. The board secretary records the minutes of the board meetings, documents them, and then circulates them for approval. It's the formalization of the board minutes.
Q. What was your compensation for these positions?
A. I did not receive any compensation.
Special purpose acquisition companies have two ways to be rewarded, if you will. One is you either receive stock, founder shares in stock, or you get paid fees. But you can't have both, and I chose the stock.
Q. Do you remember approximately how much stock you received?
A. I received 62,500 shares of stock, founder shares.
Q. What were your general duties and responsibilities as the CFO of ASSAC?
A. ASSAC at the time had very limited activity. So we periodically recorded the transactions of the company. It had committed that it would follow domestic Securities and Exchange Commission filing requirements. So we filed quarterly and annual reports. And with that is I coordinated the independent accountants doing the audit and I also had an accounting

professional individual that prepared a lot of the transactional documents and also a lot of the disclosures associated with the accounting-related aspects of the company.

Q. Do you recall approximately when ASSAC was actually formed?
A. It was formed in the spring of 2007.
Q. When did it become a public company?
A. It became a public company in January of 2008.
Q. What does it mean to become a public company?
A. It means your shares are registered with the Securities and Exchange Commission and can be traded in an exchange, stock market exchange. The public can buy and sell shares of your company.
Q. Now, at the time you first started acting as CFO of ASSAC, was that your full-time occupation?
A. No, it was not.
Q. Approximately how much of your work time was taken up by your responsibilities for ASSAC?
A. It was a minimal amount of time during this development process. It was sporadic because of the quarterly filings and annual filings. On an average, five hours a week or less.
Q. Based on your experience working for ASSAC, what was your understanding of who the primary decision-maker or makers were at ASSAC?
A. I believe -- it's obvious the board was the primary

decision-maker, but for the day-to-day activity and the direction of the company, I would say that Gary Hirst as the president of the company would be the primary engineer or the primary director of the organization.
Q. Did you know Gary Hirst prior to joining ASSAC?
A. I did not.
Q. What was his position at ASSAC?
A. He was the president of the company.
Q. What was your understanding of what his role was?
A. He provided the day-to-day operational aspects of the company and the direction of both the investments and the decisions with respect to disbursements and general guidance.
Q. What does disbursements mean?
A. Disbursements are obligations that the company had that you would pay.
Q. Now, after you met Mr. Hirst and came to know him, did you learn about his professional or educational background?
A. I don't know specifically about his educational background, but I understood that he was both a medical doctor and an attorney.
Q. Did you have any understanding of his professional background besides that?
A. Just generally, yes.
Q. What was that?
A. That he had spent a considerable amount of time with

investment funds, hedge funds, and managing those funds for the benefit of their investors.
Q. Over the course of your time working with him, did you develop an understanding or a belief about his level of financial sophistication?
A. I would call him very sophisticated financially.
Q. Now, we spoke a little bit about Jason Galanis. What was his role at ASSAC?
A. His role was, I would categorize him as the financial engineer of ASSAC. In other words, I think he was very much involved in the development of the organization, perhaps selection of the board members and the direction of the company.
Q. Did Mr. Galanis have a formal title at ASSAC?
A. He did not.
Q. Did ASSAC have an office?
A. It was registered in the Cayman Islands. It really didn't have an office in the Cayman Islands and it did not have a U.S. office.
Q. Where did you work from?
A. I worked out of my home.
Q. Now, during the time of your work at ASSAC, would you communicate with Mr. Hirst?
A. Yes, I would.
Q. How did you communicate with him?

A. At various times we would communicate by telephone, we would communicate by e-mail, and there were certain times we used the software program called Skype to be able to communicate.

Q. Just that we are clear, what is Skype?

A. Skype is an Internet-based software that allows a person over the Internet to both type messages, which would be chatting, also to telephone over Skype, and I believe there is also a video component so each party could see each other speaking if they wanted to, all from your computer.

Q. Which if any of those components would you use sometimes in your communications with Mr. Hirst?

A. Just the chatting, the typing aspect of it.

Q. Now focusing on, again, the time of ASSAC and your role as CFO there, how frequently were you communicating with Mr. Hirst via one of those methods?

A. During the formation years, infrequently. Only when I needed approval to pay something, disburse some things, or there would be minutes or there would be transactional stuff that needed to be approved or clarified. But it was not that often.

Q. At that time?

A. At that time.

Q. Were there other employees of ASSAC besides yourself?

A. I don't recall if there were other officers. There were no employees of ASSAC at that time. There may have been one more officer, but I don't specifically recall.

Q. Did ASSAC have any outside accountants?

A. ASSAC engaged an independent accounting firmed called Rothstein Kass as their auditors.

Q. Was there a particular person at Rothstein Kass who was assigned to ASSAC clients?

A. The person in charge was a gentleman by the name Joseph Puglisi.

Q. Did ASSAC have legal counsel?

A. Yes, it did.

Q. Who was that?

A. The firm of Hodgson Russ.

Q. Do you recall the name of any of the attorneys who worked an at ASSAC from Hodgson Russ?

A. Three were three. Stephen Weiss was the lead attorney. Eric Pinero assisted him. And then there was another gentleman by the name of Shant Chalian.

Q. Who were the members of the board when you joined ASSAC, do you recall?

A. There were six, as I recall. There was Gary Hirst. There was a gentleman by the name of Arie Van Roon. There was myself. There was Angela Ho. There was Angela Ho's boyfriend, a gentleman by the name of Peter something or other. And then there was another gentleman I believe by the name of Stuart. I

don't recall his last name.
Q. Was Mr. Galanis a member of the board?
A. He was not.
Q. Do you know why?
A. First of all, he had the Securities and Exchange Commission bar from him acting as an officer or a director in a public company, and I don't think he was ever considered for a position on the board.
Q. In addition to your work at ASSAC, did you have any involvement with other entities associated with Mr. Galanis?
A. I did.
Q. What entities were they?
A. There were two. One was called Fund.Com, Inc. and the other one was called Rineon, Inc.
THE COURT: Fund or Fun?
THE WITNESS: F-U-N-D.com.
BY MS. HECTOR:
Q. Let's start with Rineon. What kind of company was Rineon?
A. Rineon was formed as a company to acquire or be involved in the insurance industry.
Q. What was Mr. Galanis's role there?
A. His role initially was more what I would term, again, the financial engineer, organizing the company, and helping with strategic direction of the company.
Q. What was your role at Rineon?

A. I was to be the chief financial officer.
Q. When did you join Rineon?
A. I believe it was in 2009.
Q. Did you receive any compensation in connection with that role?
A. I did not. I was supposed to be paid $5,000 a month and I had some stock that we vested over a period of time. I did not receive any of those funds personally.
Q. What about the stock?
A. I did not receive the stock either.
Q. When did you cease your role at Rineon?
A. I resigned my position at Rineon just prior to the time period when Asia Special Situation Acquisition Company acquired the assets and changed its name to Gerova Financial Group.
Q. We will get to that, but for now let's stop there.
So did Mr. Hirst have a role at Rineon?
A. He did not have a -- he was not a director or an officer. He did assist in providing some guidance with respect to the due diligence and the direction of insurance acquisitions.
Q. Do you know if he owned any shares of Rineon?
A. I don't believe he owned any shares personally in Rineon.
Q. What about through any entities that he was affiliated with?
A. I do believe he owned some shares in Rineon through entities that I would categorize his involvement in.

Q. Turning to Fund.com, what kind of company was Fund.com?
A. Fund.com was organized as a lead generation company. It's primary purpose was to have a Web site that was informative for people who wanted to understand investments and thereby would create a revenue stream by recommending those people to various investment opportunities for them.
Q. What was your role at Fund.com?
A. I was the chief financial officer.
Q. When did you start that position?
A. I actually agreed to become the chief financial officer in November of 2007, but I didn't start officially until March 1 of 2008.
Q. Did you receive any compensation in connection with that role?
A. I did.
Q. What was that?
A. My salary was $120,000 annually.
Q. Did you receive any shares of Fund.com in connection with that role?
A. I received stock options, not shares.
Q. Did you ever exercise those options?
A. The options were never exercisable because the strike price for the options, the stock was never above that price. So I never exercised any of the options.
Q. Just to be clear, what is an option?

A. An option is a right to buy a share of stock at a specific time for a price.
Q. I asked you if you had ever exercised those options. What does it mean to exercise an option?
A. It means to take the options and turn them into actual stock certificates.
Q. And you never did that with respect to your Fund.com shares?
A. Correct.
Q. When did you cease your role at Fund.com?
A. I actually resigned in late in 2011.
Q. And at the time were you still owed money backpay or compensation?
A. Yes. A significant amount of money.
Q. Approximately how much were you owed at that time?
A. Approximately a quarter of a million dollars.
Q. Now, Mr. Hlavsa, let's focus back on ASSAC.
You described ASSAC as a SPAC. Can a SPAC exist as a SPAC forever?
A. No. There are limitations that the -- it generally has to buy or acquire or be acquired by another company within a two-year period from when it is formed, from when it becomes a public company, I guess. When it's formed.
Q. Is that sometimes referred to, for ease of reference, as de-SPACing?

A. I would use that term de-SPACing. It's the event of when it no longer is a SPAC and is an operating company.
Q. Now, when a SPAC de-SPACs, would the shareholders of the SPAC automatically become shareholders of the ongoing entity?
A. Yes.
Q. Now, were you aware, was there a time limit on when ASSAC needed to de-SPAC?
A. It's limitation was two years. So it needed to de-SPAC in January of 2010.
Q. Now, did the original plan that you testified about, which was sort of capitalizing on Angela Ho's connections in Asia and in gaming, did that come to fruition?
A. It did not.
Q. How did the plan change?
A. The company tried to have some relationships with a few different companies, and in the end of -- towards the end of 2009 it was unable to consummate any of those transactions. So it decided to go in a distinctly different direction.
Q. And what direction was that?
A. It had made a decision to acquire assets of three types of organizations, which I can describe. Those assets would be acquired by the issuance of stock, the company stock, and then thereby those assets would be used in other ways.
Q. What were the assets that ASSAC decided to look into acquiring at that time?

A. There were three general assets. The first one was Stillwater Group, and within the Stillwater Group there were a series of different investment funds that the company was going to acquire by the exchange of its shares, and those shares would be given to the investors in those specific funds.

The second one came from Weston Capital Management. They had two funds which are commonly referred to as the Wimbleton funds. It's D-O-N. Wimbledon funds.

And the last one was a company by the name of Amalphis which owned an operating insurance division already. It was an operating insurance company.

Q. What was the plan for the ongoing entity if these transactions would take effect?

A. The Stillwater and the Weston assets were what is termed to be illiquid assets, illiquid funds. What that means is they weren't readily able to be turned into cash. So they were investments in things that couldn't be sold in the immediate term.

So the plan for the company was to take these assets and then use them in the insurance sector as contributed capital. That was a period of time when the financial markets were not in great shape. A lot of insurance companies were in the danger of being uncapitalized. When an insurance company is uncapitalized, it's not able to issue policies because it doesn't have enough capital in the company.

So the plan was to take these assets, provide them to insurance companies, thereby allowing the insurance companies to increase their ability to issue more policies.

Q. Did ASSAC actually make these acquisitions that you described and de-SPAC?

A. Yes, it did.

Q. When, approximately, did that occur?

A. January of 2010.

Q. So you described the three separate entities. What was your understanding of the approximate value of the total assets that ASSAC acquired?

A. About $750 million.

Q. And in conjunction with these acquisitions, did ASSAC become a new entity?

A. Yes, it did.

Q. What was the name of that new entity?

A. Gerova Financial Group.

Q. Do you know where that name came from, who came up with that?

A. I believe that Gary Hirst originated that name.

Q. Now, did you have any role in soliciting these three acquisitions that you just described of Stillwater, Weston and the insurance entity?

A. I did not.

Q. Did you have any role in negotiating those transactions on

behalf of the SPAC ASSAC?
A. I did not.
Q. Who at ASSAC, to your knowledge, participated in those negotiations for those acquisitions?
A. I don't have personal knowledge with respect to who actually participated in those negotiations.
Q. So do you know how the opportunity to acquire Stillwater was first brought to the attention of ASSAC?
A. I do not.
Q. Do you know how the opportunity to acquire Weston was first brought to the attention of ASSAC?
A. I do not.
Q. Did you develop a belief over the course of your work at Gerova as to how the Weston opportunity did come to ASSAC's attention?
A. At some point in time I believe the introduction of Weston probably came to Gerova through a gentleman by the name of Joseph Bianco.
MR. TREMONTE: Objection, your Honor. Speculation.
THE COURT: Pause.
Put a question.
BY MS. HECTOR:
Q. How did you come to that belief or understanding?
A. Through interaction. There is a gentleman by the name of Joseph Bianco who became the CEO of Gerova sometime in the

summer of 2010. In that position and my position I worked closely with Joseph and witnessed and saw his interaction with Weston Capital Management, who we also worked closely with, and realized that through that interaction that I believe he was the one who would have introduced the Weston transaction to Gerova.

Q. Did you come to learn that Mr. Bianco had a past relationship with Weston or Mr. Hallac?

A. At one point in time, and I don't recall specifically, Joseph Bianco was the chairman of the board of Fund.com and Fund.com ended up forming an agreement with Weston Capital Management that the two organizations would merge.

Q. Is that prior to ASSAC --

A. It was --

Q. -- and de-SPACing?

A. The merger actually I believe occurred, or that transaction -- it wasn't a merger -- I believe it occurred in the spring or summer of 2010. It would be subsequent to the de-SPACing.

THE COURT: Ladies and gentlemen, we are going to break a little bit early for lunch. We are going to resume at ten minutes of two today because we are breaking ten minutes early.

Again, my goal is to be efficient in our use of time. That's why I am doing that. And I need to take up a matter with the attorneys and tend to another court matter.

As always, do not discuss the case amongst yourselves or with anyone else.

See you back, ready for action at 10 to 2.

(Jury exits courtroom)

(Continued on next page)

(Jury not present)

THE COURT: Very briefly, on the Skype messages, the government wants to introduce 9/27/2010, 4:52, through 9/28 11:31. And I will require them also to introduce 9/28/2010, 11:57 through and including 1:54:40.

With regard to 9/30, they seek to introduce from 9/30 11:48:03 to 9/30, 11:17:26. I will require them also to offer at the same time through to -- that's all you will be required to offer on 9/30.

That's my ruling.

Have a nice lunch.

We will take up the expert witness issue at the end of the day.

(Luncheon recess)

(Jury present)

THE COURT: Good afternoon, ladies and gentlemen.

JURORS: Good afternoon.

THE COURT: You may proceed, Ms. Hector.

MS. HECTOR: Thank you, your Honor.

BY MS. HECTOR:

Q. Mr. Hlavsa, when we broke for lunch, we were talking about the acquisitions that were undertaken in the formation of Gerova, and I think you had specified there were three; Stillwater, Weston and the insurance entity Amalphis; is that right?

A. That's correct.

Q. So I'd like to ask you to start to describe the general terms of those acquisitions, and if we could start with Amalphis.

A. The general terms for Amalphis was we exchanged our shares of stock for an 81 and a half percent economic interest in that entity.

Q. Did the entity Rineon play any part in that transaction?

A. It wasn't a part -- well, it did, because there was a shareholder agreement where all of the people associated with Amalphis had to sign an agreement with an understanding as to who had rights and who had priorities, but it was not part of the transaction itself.

Q. Well, could you describe a little more fully what role the

entity Rineon did play in that transaction visa vis Amalphis?
A. Rineon ultimately -- Amalphis ultimately dividended its shares that it got from Gerova to its principal shareholders, of which Rineon was a party to that, and ultimately, Rineon ended up with a significant amount of Gerova shares.
Q. So as a result of that transaction, did Rineon become a large shareholder in Gerova?
A. It did.
MR. TREMONTE: Objection.
THE COURT: If you know. Do you have knowledge on that subject, sir?
THE WITNESS: Yes.
THE COURT: Thank you.
Overruled.
MS. HECTOR: Thank you.
Q. Do you recall the approximate value of Amalphis?
A. It was approximately $54 million.
Q. Now let's move to Stillwater and Weston.
Starting with Weston. Do you recall how those transactions proceeded?
A. Those transactions were an exchange of the shares of Gerova, and they would be exchanged for the interest in those assets of Wimbleton.
Q. Basically, an exchange of shares for the assets of Wimbleton and Stillwater?

A. Correct.
Q. Do you recall what the approximate value of Stillwater was?
A. The approximate value of the -- could you repeat the question?
Q. Do you recall what the approximate value of the Stillwater transaction was?
A. The approximate value of the Stillwater transaction was about $550 million.
Q. What about the Weston or Wimbleton transaction?
A. That was $114 million.
Q. Just to clear up any confusion, sometimes you refer to Weston and sometimes you refer to Wimbleton. What is the relationship between Weston and Wimbleton?
A. Weston was the entity that managed the assets of Wimbleton. Wimbleton were actually the funds, the investment funds themselves.
Q. So after these acquisitions were completed, did you continue to act as CFO of the ongoing entity?
A. I did.
Q. What was that ongoing entity called at that point?
A. Gerova Financial Group.
Q. Now, how, if at all, did the amount of time you were spending in that role change from the time you were the CFO of ASSAC?
A. It increased dramatically. It was a full-time position.

Q. Did your compensation change?
A. It did.
Q. How so?
A. Initially, my compensation was $120,000 a year, and then it was raised to $225,000 a year.
Q. Did you receive any additional shares of Gerova in connection with the acquisitions?
A. I did not.
Q. Once Gerova was formed, who became the CEO of Gerova?
A. There was a gentleman by the name of Marshall Manley.
Q. What were his responsibilities?
A. He was responsible for the day-to-day activity of the organization and focusing the company through its business strategy.
Q. Who were the other officers of Gerova at that time after the formation?
A. There was a chief operating officer, a gentleman by the name of Tore Nag. T-o-r-e, N-a-g. There was myself, and Gary Hirst remained as president of the company --
Q. You've previously mentioned during your testimony an individual by the name Joe Bianco. Do you recall that?
A. Yes.
Q. What was his role at Gerova after the acquisitions?
A. He had no official role of an officer or director immediately after the acquisitions.

Q. Despite not having an official role, was he involved with Gerova at that time?
A. He was involved in a role where he knew the Stillwater party, he knew the Gerova party, and he acted as an intermediary with respect to communication between these parties.
Q. Did he eventually take on a formal title at Gerova?
A. He did.
Q. And what was that title?
A. He became the chief executive officer.
Q. Do you recall approximately when that happened?
A. It happened in June of 2010.
Q. Once Gerova was formed, were you still working from your home?
A. Yes, I was, but I traveled to New York frequently.
Q. What about the other corporate officers that you've mentioned, Tore Nag and Mr. Hirst?
A. Gerova ended up releasing some space in the Stillwater offices. They had a few offices in that building on that floor, because so much of the activity was Stillwater based, so Tore Nag and a few people -- Marshall Manley certainly occupied those offices when he was in New York. So there were some offices, and those people were there most of the time. Myself and Gary Hirst continued to work out of our homes primarily.
Q. Did Mr. Hirst retain the position of president in the newly

formed entity?
A. He did.
Q. What was his role with respect to the board?
A. I believe he was chairman of the board.
Q. Separate and apart from his title, what was his role in the newly formed entity?
A. In the newly formed entity, his role was diminished because the primary responsibility was Marshall Manley's to direct and guide the company, but he still was active in the decisions that were to be made on behalf of the company.
Q. You previously testified that you had to go to him for disbursements. Did that continue?
A. That did continue. He was my primary contact point with respect to the financial transactions and the disbursements.
Q. Do you know what Mr. Hirst's salary was at Gerova?
A. I think it was approximately $400,000 a year.
Q. Do you know whether he received shares of Gerova?
A. He did receive founder shares of Gerova, yes.
Q. After Gerova was formed, did you continue to report directly to Mr. Hirst?
A. I did.
Q. Now, did you continue to communicate with him in connection with your role at the company?
A. I did.
Q. The means of communication that you described before, did

they essentially remain the same?
A. They did.
Q. Did the frequency of communications change after the formation of Gerova?
A. They became much more frequent. There was more activity.
Q. Approximately how frequently would you communicate? Was it a weekly basis, a daily basis, multiple times a day?
A. Some days it was multiple times a day, and if there was no reason to, it could be a couple times a week.
Q. Did you ever meet in person?
A. Yes.
Q. How often would you do that?
A. Probably or approximately once a month, one or two days a month.
Q. What was the purpose of those monthly in-person meetings?
A. Just to catch up and strategize on a face-to-face basis.
Q. And where would those in-person meetings occur?
A. They would occur in his home in Heathrow, Florida.
Q. Who would generally attend those meetings?
A. Primarily, it was just me and him.
Q. What about Mr. Galanis? Did he have a continuing role at Gerova once it was formed?
A. He did.
Q. What was that?
A. He continued to try to find business opportunities for

Gerova.
Q. Did he eventually take on a formal role?
A. He did. His role was formalized.
Q. And what was that?
A. He became the CEO of a wholly owned subsidiary called Gerova Advisors.
Q. Do you know, do you recall approximately when that happened at all?
A. It was in 2010. I believe it was probably the second half of 2010.
Q. Do you know if Mr. Galanis was paid for that role?
A. He had a -- there was a salary designated, but I don't believe that he ever received any compensation.
Q. So after the formation of Gerova, who, in your experience and work there, were the primary decision-makers at the company?
A. Certainly the CEO, and the other decision-maker would be Gary Hirst as the president.
Q. Now, at the time of the formation of the Gerova, did the board of directors composition change?
A. It did.
Q. How so?
A. I believe we added a few members of the board of directors and shuffled some people around.
Q. Mr. Hlavsa, I'd like to turn your attention to what's

admitted in evidence as Government's Exhibit 200.

MS. HECTOR: Ms. Sheinwald, if you could pull that up for us.

Q. Mr. Hlavsa, documents are going to appear on the screen in front of you, but I've also provided you with hard copies. If you're more comfortable looking at the hard copies, you can do that, as well.

Mr. Hlavsa, do you recognize what this document is?

A. This document is the second amended and restated memorandum and articles of association concerning Gerova Financial Group, Ltd.

Q. Focusing still on that first page, what does it say about when these articles of association were adopted?

A. They were adopted on January 19th, 2010.

Q. What is the significance of that date, if at all, to you?

A. That's directly around the time of the de-SPACing.

Q. What is your understanding in general of what articles of association are?

A. Those are -- in common terms, they're the bylaws, they're the rules of which an organization conducts its activity.

MS. HECTOR: Now, if we could turn to page 8 to 9 of this document, so starting I guess with page 8.

Q. Mr. Hlavsa, do you see a section at the bottom of this document that's entitled "issue of shares" and it's Section 5?

A. I do.

Q. Now, before we look at this document, during your time that you served on the board of directors at Gerova and/or functioned as its secretary, what was your understanding as to whether board approval was required for the issuance of shares of Gerova?

MR. TREMONTE: Objection, foundation.

THE COURT: Overruled.

THE WITNESS: My understanding is the board of directors had to approve any equity issuances on behalf of the company.

Q. Could you read provision 5 to us?

A. Sure. "Subject to the provisions, if any, in the memorandum (and to any direction that may be given by the company in general meeting) and where applicable, the rules of the designated stock exchange and/or any competent regulatory authority and without prejudice to any rights attached to any existing shares, the directors may allot, issue, grant options over, or otherwise dispose of shares, including fractions of a" --

MS. HECTOR: Ms. Sheinwald, could we turn to the next page, page 9, and just pull out the top?

Q. Just, could you finish reading that?

A. -- "share with or without deferred or other rights or restrictions, whether in regard to dividend, voting, return of capital, or otherwise, and to such persons at such time and on such other terms as they think proper."

Q. Now, Mr. Hlavsa, when you recited your professional background for the jury, did that include your having worked at other public companies in the past?

A. Yes.

Q. And have you served on the boards of other public companies in the past?

A. I have.

Q. In your general experience of having worked for and served on the boards of other public companies, is board approval typically required for share issuance, in your experience?

A. Yes, it is.

Q. Now, where were board meetings for Gerova held?

A. They were physically held in the Cayman Islands, typically. We would all call in, we would telephonically communicate the board meetings, and occasionally we actually held board meetings in either Toronto or the Bahamas.

Q. Was there a reason that board meetings were held in the Cayman Islands or Toronto?

A. Sure.

Q. What was that?

A. Gerova was what's termed to be a foreign private issuer, which means that it was treated as a foreign corporation, not a domestic corporation.

Q. In what country was Gerova domiciled?

A. Cayman Islands initially, and then it moved its domicile to Bermuda.
Q. So for board meetings, would members appear in person, or telephonically, or sometimes one or the other?
A. Typically, telephonically, and occasionally, in person.
Q. Who ran the board meetings for Gerova?
A. The chairman of the board was Gary Hirst, and he typically ran the meetings.
Q. In your experience as part of those board meetings, did Mr. Hirst typically conduct them in a formal or informal fashion?
A. I would say a formal fashion.
Q. And what makes you say that?
A. Because the meetings were called to order in accordance with the articles of association, notice was given, agendas were distributed, and agendas were typically followed throughout the meeting. Motions were presented, they were seconded, votes were taken, and the motions either passed or failed, with the proper minutes being taken.
Q. Now, I'd like to focus your attention on a particular board meeting, and that's one held on April 7th and 8th of 2010. Do you recall that board meeting?
A. Yes.
Q. Where did that board meeting occur?
A. In the Bahamas.

Q. Now, prior to that meeting, what issues, if any, were going on at Gerova regarding Mr. Manley's position as CEO?

A. With respect to Marshall Manley as CEO, there were questions as to his ability to function in that position.

Q. Could you elaborate a bit? What were the issues or the questions, what was the cause of those questions?

A. My recollection was that the assets that were purchased were subject to valuation. That valuation took a great amount of time and effort to understand the true value of those assets. Marshall Manley began a process of identifying which assets were held and what the ultimate value of those assets were. In doing that, there developed some conflicts between the holders, the previous holders of those assets, specifically Stillwater and Weston, and Marshall Manley and the now COO and the other people that were determining what value those assets had.

Q. What was the significance of the value of those assets, both to Gerova and to the stakeholders that you've just mentioned, meaning Stillwater and Weston?

A. There were two things to be considered. The first was, if the assets were valued less than what they were represented when the transaction closed, that means the investors in each one of those funds would receive less shares. However, the other side was, if the assets were significantly less than what was represented, Gerova could not use those assets in its business strategy to contribute them to insurance companies as capital.

Q. You described this as some sort of contention. Who fell on which side of this contention among those at Gerova on the value of those assets?

A. Marshall Manley and the COO, Tore Nag, and the other gentleman that was helping them were on the side of questioning the assets and proposing that they did not have the value as represented by particularly Stillwater, and in less degree to Weston.

On the other side was Gary Hirst and Jason Galanis and Jack Doueck, who Jack Doueck was with Stillwater. They were on the other side of the discussion.

Q. Where did you fall in that dynamic in terms of your view of the value of the assets? Which side?

A. I really didn't have a view at the time because I wasn't intimately involved in it. However, over time, I believe that the value of the assets was much closer to a diminished amount, which would have been probably in the Marshall Manley camp.

Q. Did you come to learn that certain people at Gerova wanted to fire Mr. Manley?

A. I did.

Q. Who wanted to fire Mr. Manley?

A. I think that Gary Hirst and Jason Galanis certainly, and to a lesser degree, Jack Doueck.

Q. Now, prior to the board meeting that occurred in the Bahamas starting on April 7th, 2010, was there a premeeting?
A. There was.
Q. Who attended the premeeting to the board meeting?
A. My recollection is it was Gary Hirst, Jason Galanis, a board member by the name of Arie Van Roon, and then there was legal counsel from DLA Piper, also.
Q. Was Mr. Galanis on the board of directors at that time?
A. He was not.
Q. What was the purpose of the premeeting?
A. The purpose of the premeeting, my role was secretary to the board of directors, and I was invited so that I understood the logical sequence that would happen the next day when the board meeting was actually occurring.
Q. What was discussed at that meeting?
A. What was discussed at the meeting was the motions that would be made, who seconded them, and the justification for removing Marshall Manley as the CEO of the company.
Q. What, if anything, was Mr. Hirst's role in that meeting?
A. He participated in the meeting.
Q. Do you remember who ran the meeting?
A. I don't recall.
Q. Did anyone discuss, if anything, what would be said to Mr. Manley as the reason for his firing?
A. There was some discussion about allegations made in a

previous position that he had and whether or not those allegations were enough of a concern that would cause a detrimental impact to the company in his role as the CEO.

Q. Did you have a sense from those discussions as to whether that was the true reason for the firing or whether this was a discussion of the reason that would be provided in the meeting?

MR. TREMONTE: Objection.

THE COURT: Rephrase the question, please.

MS. HECTOR: Okay.

Q. Was there a discussion about what reason would be provided to Mr. Manley for his firing?

A. Yes.

Q. And what was the reason that was discussed would be provided to Mr. Manley?

A. The matter that had been identified by somebody about occurrences that happened in part of Marshall Manley's history that may prevent Gerova from receiving some regulatory approvals in connection with insurance programs and those agencies.

Q. Prior to your attending that meeting, had you heard discussions about those concerns prior to that?

A. I don't recall that I did.

Q. What was your understanding and belief as a result in the participation of that meeting as to what the real reason was for Mr. Manley's firing?

MR. TREMONTE: Objection.

THE COURT: Overruled.

THE WITNESS: My belief is that the real reason for Marshall Manley's firing was because the conflicts in his interaction with other parties which became detrimental to the company.

THE COURT: What's the basis for your belief?

THE WITNESS: Just my interaction with the parties and my understanding at the time.

MS. HECTOR: May I, your Honor?

THE COURT: You may.

Q. After the premeeting, did the actual board of directors' meeting occur?

A. Yes, it did.

Q. What happened at the outset of that meeting?

A. Marshall Manley's position was terminated, and he was removed from the board of directors.

Q. Do you recall who made that motion?

A. I do not.

Q. Following the meeting, was a separation agreement negotiated?

A. Yes.

Q. Do you know who participated in those negotiations?

A. My recollection is Gary Hirst participated.

Q. Anyone else that you remember?

A. I don't. I think the primary contact with Marshall Manley was the attorney from DLA Piper.
Q. Do you recall generally what terms were arrived at in connection with that separation?
A. From my recall was there were two pieces; one, there was a separation agreement, and in there there was the severance that we paid to him, and the other aspect was that Marshall Manley had received shares in connection with agreeing to be the CEO of Gerova, and the company agreed to buy those shares back for an amount of money.
Q. Prior to that time, were you aware of those shares that had been issued to Mr. Manley?
A. I was.
Q. Do you remember how many shares had been issued to Mr. Manley?
A. Yes, I do.
Q. How many was that?
A. 5,333,333.
Q. How were those shares handled in this separation termination negotiation?
A. The shares were turned over back to the company, and the company canceled those shares.
Q. I'd like to draw your attention to Government's Exhibit 216, which is in evidence. We're going to pull it up on your screen and for the jurors. Do you recognize this

document?
A. I do.
Q. What is this?
A. This is a secretary certificate prepared by me regarding the minutes of those meetings.
Q. The meetings where Marshall Manley was fired?
A. Yes.
Q. What is a secretary certificate?
A. A secretary certificate is a document that we use to provide an affidavit, provide authority that these are the true in fact minutes of the meeting that occurred on those dates.
MS. HECTOR: Now, could we turn to the fourth page of this document? If you could look at the section that begins "resolved that the separation agreement and release" in the middle of the page.
Q. What does this say about Mr. Manley's termination?
A. It says, "Resolved, that the separation agreement and release between the company and Marshall Manley and the separate share repurchase agreement among the company, Marseilles Capital, LLC and Marshall Manley, both dated April 8th, 2010, be and hereby is approved, adopted, and ratified by and on behalf of the company."
Q. Okay, thank you.
MS. HECTOR: We can take that down.
Q. Now, Mr. Hlavsa, you've mentioned that ASSAC was a public

company. Was Gerova also a public company?
A. Yes, it was.
Q. Did Gerova have shareholders?
A. Yes, it did.
Q. Did its shares trade on an exchange?
A. It did.
Q. Do you remember what exchange they traded on in early 2010?
A. The American Stock Exchange, but the American Stock Exchange was actually purchased by the New York Stock Exchange, so it turned out to be the NYSE Euro NEX, was the exchange, but it's commonly referred to as NYSE AMEX, American Stock Exchange.
Q. AMEX, for short?
A. AMEX.
Q. Now, I'd like to turn your attention to Government's Exhibit 554, which is in evidence. Now, if you could take a moment just to look at this document. Is this an email, the cover page?
A. Yes, it is.
Q. And who is the email from and to?
A. It is from Stephen Weiss, lead counsel for Hodgson Russ.
Q. And who is it to?
A. It's to two or three people from the New York Stock Exchange, NYX, also to Gary Hirst, also to myself, and it's copied a gentleman by the name of David Stranberg from Donohoe

Advisory, and Eric Pinero, who is with Hodgson Russ.

Q. Could you just tell us who is David Stranberg at Donohoe Advisory?

A. Gerova hired Donohoe Advisory to help it in connection with its listing, listing issues, and so David Stranberg is a party to that consulting firm.

MS. HECTOR: So if we could blow up the text of this email starting "a gentleman" down to "very truly yours"? Just down to the "very truly yours" so we can read it.

Q. Can you just read the first paragraph of this email?

A. "Gentleman. At the suggestion of Matt McSweeny, we are pleased to forward to you the letter of our client Gerova Financial Group, Ltd in response to the request for further information from the NYSE: AME AMEX dated April 19th, 2010 who will be sending three courtesy copies to you by messenger."

Q. Okay. You can stop there.

Do you recall generally what this email is about?

A. I believe the email was about correspondence from the American Stock Exchange questioning whether or not we met the minimum listing requirements to continue to be on their exchange after the de-SPACing.

Q. Okay. Do you recall, was there anyone specifically at Gerova who was tasked with taking the lead on handling this issue with respect to the New York Stock Exchange AMEX?

A. I believe that would be Gary Hirst.

MS. HECTOR: Let's turn to the third page of this document, the attached letter.
Q. Who is this letter to?
A. It's to the NYSE AMEX.
MS. HECTOR: Just looking at the first paragraph, pulling that up.
Q. Could you just read that for us?
A. Sure. "Gentleman. This letter constitutes the former response of Gerova Financial Group, Ltd. (The Company) in response to your request dated April 19th, 2010 for certain information in connection with the original listing eligibility review currently being conducted by the NYSE AMEX, LLC. The Exchange."
Q. Okay, thank you.
MS. HECTOR: Now, turning to page 6 of this document, which is the last page of this letter.
Q. Who signed this document?
A. Gary Hirst.
Q. Do you recall whether you participated in drafting this document?
A. I do not.
Q. Looking at the signature on that page, do you know if this is a handwritten signature or an electronic signature?
A. I don't know for sure, but it appears to be an electronic signature.

Q. In your experience working with Mr. Hirst, did he tend to use both handwriting and electronic signatures, or one or the other, or both?
A. Both.
Q. Did you have access to his electronic signature to place on documents?
A. I did not.
Q. Do you know whether anyone else did?
A. Not that I know of.
Q. Did he ever ask you to place his signature on a document for him?
A. He did not.
MS. HECTOR: We can take that down, please. Thank you.
Q. Now, Mr. Hlavsa, was Gerova subject to annual financial reporting requirements in the United States?
A. It was.
Q. What is that annual filing called?
A. It's called a Form 20-F.
Q. And what regulatory agency does a Form 20-F have to be submitted to?
A. The Securities Exchange Commission.
Q. Who was responsible for preparing that filing?
A. It was a group effort between the SEC counsel, Hodgson Russ, myself, certainly the independent accountants, RothStein

Kass, and my financial expert, Ken Riscica.
Q. You mentioned RothStein Kass, the independent accountant. Who is Mr. Ken Riscica?
A. Ken Riscica was an accounting expert that the company engaged since its formation to help with its financial disclosures and also summarize the transactions of the company.
Q. Did either Mr. Puglisi, you've mentioned from RothStein Kass, or Mr. Riscica work for Gerova?
A. No, they did not.
Q. Okay.
A. Well, when you say "work for", none were employees.
Q. Employees.
A. Obviously, the independent accountant is paid to be independent, and Ken Riscica was paid on a consulting basis based on the hours that he spent working on Gerova matters.
Q. Thank you for that clarification. My question was inartful.
When does a Form 20-F have to be filed?
A. Within six months after the end of the year.
Q. Is that the physical year?
A. It is a fiscal year. In Gerova's case it was a calendar year because they were a calendar year reporting company, so the year end was December 31st.
Q. So if the end of the year for Gerova was December 31st, 2009, when was the Form 20-F that was due for Gerova due?

A. It would be the end of June, 2010.
Q. Would it specifically be June 30th, 2010?
A. Correct.
Q. In general, what kinds of information is reported on a Form 20-F?
A. A 20-F -- the disclosure on a 20-F is very similar to what a domestic company would call a Form 10-K, and it includes information about the company, its business strategy, risks of owning stock in that company, its financial transactions for the period that you're reporting, footnotes related to the financial transactions, and any material items with respect to its owners, officers, or anything generally that would be useful to the public in making a determination as to whether or not to buy stock in that company.
Q. Now I'd like to focus your attention on the summer of 2010. Were you working on a Form 20-F for Gerova around that time?
A. I was.
Q. Did that document include a description of the costs of the de-SPACing transactions that we've spent some time on today?
A. It did.
Q. If the 20-F was being filed for the year end December 31st, 2009, why would it include the cost associated with the acquisitions that you testified happened in January, 2010?
A. The requirement is that any material events subsequent to the period of time that you're reporting up and until the time

that you file the Form 20-F should be reported on that document.

Q. Who was involved in pulling together the information to accurately describe the cost associated with the de-SPACing transactions?

A. I think we -- a lot of us were, certainly Hodgson Russ because of the agreements, Gary Hirst had signed and had a number of agreements, I did from the accounting aspect of it, and certainly the independent auditors need to have reviewed and verified the agreements because they're reporting an opinion on the information that's contained in the 20-F.

Q. In your answer you referred a couple times to the "agreement". What kind of agreements are you referring to right now?

A. With respect to the transaction costs that were incurred in the de-SPACing transaction, all of those costs incurred had underlying agreements that indicated the terms and conditions and why those costs would be incurred.

Q. Now, which other officers at Gerova were aware that you were working on the 20-F around that time, the summer of 2010, to your knowledge?

A. Certainly, Gary Hirst, and also the CEO at the time, which was -- we had a short-term CEO for a brief period of time after Marshall Manley and before Joseph Bianco.

Q. Mr. Hlavsa, I want to now turn your attention to what's in

evidence as Government's Exhibit 201. I'm going to pull up that document on the screen for you. This is a thick document so it is provided for you if you need it. Do you recognize this document?
A. I do.
Q. What is it?
A. This is a Form 20-F for Gerova Financial Group.
Q. If we could turn to the last page of this document, which I think is also page 203, do you see your signature there?
A. I do.
Q. Now, does this page -- and we can go back -- does this page indicate the filing date of this document?
A. It indicates June 2nd, and it's typically filed that day, or certainly could be the day after, but yes, June 2nd, 2010.
MS. HECTOR: If we could go a couple pages before, I think it's page 200, Ms. Sheinwald.
Q. What is this on page 200 of this document?
A. It's another certification by the president, and it's termed the principal executive officer. There's two people that signed this document, one was the principal accounting officer, which is me, and the other is the principal executive officer, which in this case is Gary Hirst.
Q. What is the time period of the information that is included in this 20-F?
A. It's the financial transactions for the year ended

December 31st, 2009, and any subsequent events that happened between that period of time and the filing of this report.
Q. Now, you previously testified that this form is due on June 30th, 2010.
A. Correct.
Q. So do you remember why this form is filed approximately -- or not approximately -- Specifically 28 days early on June 2nd?
A. My recollection is is that the company was applying for a listing on the New York Stock Exchange at the time, and the company wanted to have this document available for the New York Stock Exchange to review in its application process.
Q. Now, turning to page 50 of this document, look at page 50. Now, are the costs associated with the de-SPACing transaction incorporated within this document?
A. They are.
MS. HECTOR: Ms. Sheinwald, could we highlight the paragraph that starts "the company estimates that it has incurred".
Q. Is that where those costs are described?
A. Yes, they are.
Q. What is the total approximate monetary cost associated with the transactions as described in this document?
A. $23,500,000.
Q. Could you just read that paragraph for us?
A. Sure. "The company estimates that it has incurred

approximately $23,500,000 in costs directly attributable to the business combinations related to attorneys, accountants, and other advisors' fees."

Q. I think you can just stop there.

Now, at this point, on June 2nd, 2010, was any finder's fee associated with the Weston transaction included in the schedules of costs that had been gathered in preparation for the filing of this document?

A. There was not.

Q. Was any finder's fee associated with the Weston transaction included in the documents and the agreements that had been gathered in connection with the preparation of this document?

A. No.

Q. So was any cost associated with that finder's fee for the Weston introduction incorporated into that number, to your understanding?

A. No.

Q. Now, at the time this document was filed on June 2nd, were you aware of a cost associated with the Weston transaction?

A. I was not.

MS. HECTOR: Could you turn to page 62 of this document? Now, there's a section here entitled "share ownership", and if we could call out that entire section, including the chart below it.

Q. What is this section of this document supposed to reflect?

A. This is a section that reflects three things; each person is known by the company that owns more than 5 percent of its shares, its ordinary shares, the second thing is each of the company's executive officers and directors and how many shares they would individually own, and then all the executive officers and directors as a group so that the reader would understand how many shares are controlled by the executive officers and directors.
Q. The first sentence of this Section reads, "The following table sets forth information known to the company regarding the beneficial ownership of ordinary shares as of May 24th, 2010." Do you see that?
A. I do.
Q. How does Gerova go about gathering the information necessary to fill out this section of the document?
A. The company requests a list from its stock transfer agent with respect to who owns the shares as of a particular date.
Q. You just mentioned a stock transfer agent. What is a stock transfer agent?
A. A stock transfer agent is an independent company that keeps track of the shares of stock owned by a company.
Q. And who was Gerova's stock transfer agent?
A. Continental Stock Transfer.
Q. You mentioned that the company requests a list. Is that referred to as a shareholder list?

A. Yes.
Q. Are there different kinds of shareholder lists that can be requested from Continental, the transfer agent?
A. Yes, there are.
Q. What kinds are there that can be requested?
A. In Gerova's case, it had three securities that were publicly traded. There were units, which was a combination of a warrant, and then there was a combination of a warrant and a common shares, those were units. So we can request a list on the common shares, the units, and the warrants at a particular time and date. The other list that you would ask them for is one that is a cumulative list of every transaction that happens within the stock itself.
Q. What kind of list would have been requested for the purposes of filling out this table?
A. This would have been the shareholders that the stock transfer agent knew about as of a specific date.
Q. Not a transactional list like you just described?
A. Correct.
MS. HECTOR: Can we pull that page back up? It was page 62. Now, just focusing on that first sentence under "share ownership", if we could call out that. Okay.
Q. We just established that the information in the table regards the beneficial ownership of shares as of May 24th, 2010. How is that date chosen? What does that reflect?

A. Typically, you want the date that's in close proximity as to when you're going to file the report, because you want to indicate to the reader with certain accuracy that as of the date of the filing, these are about the shares that were outstanding in the shareholders.
Q. In your experience as a CFO and someone responsible for regulatory filings, how close in proximity to the filing should the list typically be obtained?
A. I've seen it pulled within a day of the filing, and as long as 10 days, a week or so. May 24th is right on the cusp of being what we would term to be stale data. It just wouldn't be current enough to be reported.
Q. So you think on the cusp, you said?
A. Yes.
MS. HECTOR: Could we turn to page 65 of this document? There's a section entitled "transactions with directors and executive officers". Could we call that out? Okay.
Q. I want to focus your attention on the second paragraph there that begins "on April 8th". What is reflected there in this document?
A. This is a disclosure that the company reached a settlement agreement with Marshall Manley and that the shares which Marshall Manley owned through Marseilles Capital were sold back to the company.

Q. And how many shares was that?
A. 5,333,333.
Q. Do you know what happened to those shares once they were sold back to the company?
A. They were canceled.
Q. What does it mean to be canceled?
A. It means there was an instruction given to the stock transfer agent that the shares be canceled and removed from the listing of ordinary shares.
Q. Now, subsequent to this filing --
MS. HECTOR: We can take it down, please.
Q. -- did Gerova file an amended version of the 20-F?
A. It did.
Q. I'm going to call your attention to what's in evidence as Government's Exhibit 201A. Do you recognize this document?
A. Yes, I do.
Q. What is this?
A. This is a Form 20-F/A, which indicates that it's an amendment to the original form that was filed.
MS. HECTOR: Now, turning to page 6 of this document, please, there's a section entitled "explanatory note".
Q. What is provided in this explanatory note as the reason for the amendment?
A. What's stated here is the amendment was filed to update certain risk factors related to the company to include

information on recently appointed executive officers, to provide additional disclosures regarding corporate governance, and to highlight certain reporting and disclosure differences related to foreign private issuers.

Q. Do any of those reasons concern the business combination cost that we just discussed?

A. No, they don't.

MS. HECTOR: Could I have one moment, your Honor?

THE COURT: You may.

(Pause)

MS. HECTOR: Your Honor.

THE COURT: All right. Cross examination?

MS. HECTOR: I'm sorry. I just had asked to confer on an issue.

THE COURT: When you said "thank you", that's what I assumed, not if you asked if you could consult.

MS. HECTOR: I was thanking you for the opportunity to consult.

THE COURT: You're most welcome.

MS. HECTOR: Okay.

Could we turn to page 171 of this document? I'm sorry. Could we turn to the last page of this document? One second, your Honor. Is this 201A that we have on the screen? Sorry. Okay, that's it. We had the wrong document on the screen all of a sudden. We're back on 201A. Could we turn to page 171 of 201A? Thank you.

BY MS. HECTOR:

Q. Who signed this document, Mr. Hlavsa?

A. Joseph Bianco.

Q. And when was this amended version filed?

A. June 16th, 2010.

Q. When you were working on the amended 20-F in June of 2010, did you travel to New York City to do so?

A. I did.

Q. Why did you travel to New York City to do that?

MS. HECTOR: We can take that down.

A. It was much more convenient to meet face-to-face with both Ken Riscica, our independent professional, and Joseph Puglisi with the firm of RothStein Kass and to work together.

Q. Where would you typically work when you did that?

A. We typically worked at Hodgson Russ. While sometimes we worked at the Stillwater offices, there was more space available at Hodgson Russ.

Q. I'd like to turn your attention to a specific meeting in June, 2010 at the offices of Hodgson Russ when you were working on the amended 20-F. Do you recall a meeting at their offices around that time?

A. I do.

Q. Who was with you at that meeting?

A. Ken Riscica and Joseph Puglisi.

Q. Prior to that meeting, but before the filing -- I'm sorry, let me rephrase.

Prior to that meeting, but after the filing of the first 20-F on June 2nd, 2010, had you become generally aware of a fee owed by Gerova in connection with the Weston transaction?

A. I did.

Q. Who told you about that fee?

A. I believe Gary Hirst.

Q. Okay.

MS. HECTOR: Can we pull up Government's Exhibit 613 that is in evidence?

Q. What is this document?

A. This is an email.

Q. What is the date on these emails? Both of them have the same date.

A. June 13th, 2010.

Q. Looking at the bottom section of that email, who is it from and to?

A. The bottom section is from me to Gary Hirst.

Q. What do you say to Mr. Hirst?

A. I say, "Gary. Please see final version on page F16. It discloses 23.5 million in transaction costs. If you want to revise the language, we will have to have Ken review and Puglisi agree to changes. Michael."

Q. Looking at the top section of that email, how does

Mr. Hirst respond to that?
A. He responds, "I just want to make sure that the 23.5 million includes the finder's fee for the Wimbleton transaction. It probably does, but want to make sure."
Q. Okay. What does he say next?
A. "Can you send me a list of what comprises the 23.5 million or confirm that the Wimbleton fee is included."
Q. Okay. Now, does 23.5 million refer to the business combination cost that was in that 20-F document we looked at?
A. Yes, it does.
Q. Okay.
MS. HECTOR: Could we pull up 614?
Q. The previous email was just marked dated June 13th, 2010. What is this email dated?
A. This email is dated June 14th, 2010.
Q. Who is it from and to?
A. Me to Gary Hirst.
Q. What do you say to Mr. Hirst?
A. "Proforma with closing costs identified. There is no fee included for Weston. I have not asked the accounting side about this as yet. We would need to see the agreement (which I do not have) and then get buy-in from Riscica and Puglisi to modify the 20-F."
Q. Now, Mr. Hlavsa, at this point, June 14th, 2010, did you have the agreement?

A. No, I did not.

Q. What do you indicate to Mr. Gary Hirst about whether you have the agreement?

A. I indicate I do not have it.

(Continued on next page)

BY MS. HECTOR:
Q. Now, let's turn back to that meeting, in the offices of Hodgson Russ, in June 2010 when you're working on the amended 20-F. I would like to hand you or to call your attention to what has been marked in evidence as Government Exhibit 250.
Would you take a moment to look at that document?
A. I have.
Q. When is the first time that you saw this document?
A. My recollection is this document was handed to me by Stephen Weiss from Hodgson Russ with the indication that Gary wants to make sure that this is included in the transactional costs.
Q. I'm sorry.
A. You want me to repeat at that?
Q. Yes, please.
A. The first time I saw this document is when Stephen Weiss from Hodgson Russ handed it to me in the Hodgson Russ offices telling me that Gary Hirst wanted to make sure that this was included in the transactional costs.
MS. HECTOR: Do the jurors still have their screens because I lost mine. My screen just went off.
As long as the jurors have it, which I don't know, but if so, I will just use a hard copy until mine comes back.
Shall I continue?
THE COURT: Yes, please.

You have the hard copy. The jurors have the document. I don't have the document now. My deputy seems to have it, but I don't have it.

MS. HECTOR: Do you want me to wait?

THE COURT: No, no.

MS. HECTOR: Your Honor, I can hand you a hard copy if you'd like.

THE COURT: I think I may be able to extract it from the binder.

MS. HECTOR: It's Government Exhibit 250.

THE COURT: This is the back-up device, the paper. Let me go to the back-up device here.

BY MS. HECTOR:

Q. So, Mr. Hlavsa, you have the document, correct?

A. I do.

Q. So prior to the moment that Mr. Weiss handed you this document in Hodgson Russ's offices in June 2010, had you ever seen this document before?

A. I had not.

Q. Let's walk through the document.

Focusing first on the first paragraph of the document.

THE COURT: It may be worth our while to do this.

I am going to suggest that we take a mid-afternoon break and let our very fine technical staff do their work. Presently on his back with a flashlight underneath the desk.

(Jury exits courtroom)

(Recess)

(Jury present)

THE COURT: So rather than going all the way back to the 1970s and before with the paper, we are going to do it 80s and 90s style with a projector. So that's where we are. Sorry, ladies and gentlemen.

Go ahead.

BY MS. HECTOR:

Q. Mr. Hlavsa, just to situate us, we were talking about a moment in June 2010 at the offices of Hodgson Russ when you received Government Exhibit 250, the consulting agreement, for the first time. And we have that now up on the projector screen.

THE COURT: This is Exhibit 250.

MS. HECTOR: 250.

Q. I would like to walk through some of its terms.

Mr. Hlavsa, you may want to pull out your hard copy because I'm not -- oh, you have a screen. Fantastic.

Now, turning to the first paragraph of this exhibit.

MS. HECTOR: If we could blow that up for the jury as large as we can.

Q. So focusing on the first paragraph, what is the date of this agreement?

A. The date is January 22, 2010.

Q. Who are the parties to the agreement?

A. The parties are Ymer Shahini, an individual, and Gerova Financial Group.

Q. Is an address provided for Mr. Shahini?

A. The address is a street and city in the Czech Republic.

Q. Prior to receiving this document in June 2010, had you ever heard of Mr. Ymer Shahini at all?

A. I did not.

Q. Turning to the middle of this document, the section entitled "consulting services," what consulting services does this agreement suggest that Mr. Shahini has provided to Gerova? Could you walk us through those?

A. Sure. There were three.

The first one is introduction of the company to Weston Capital Management and assisting the company in entering into an agreement to acquire assets from funds managed by Weston.

The second thing is assisting the company and its management and representatives in conducting its due diligence investigation of the assets of Weston.

Lastly, following the consummation of the Weston acquisition, identifying other potential hedge fund assets or bank-owned assets for potential acquisition by the company.

Q. So focusing on A, the first one, prior to receiving this agreement, did you have any awareness that someone named Ymer Shahini had introduced the company to Weston Management and

assisted the company in entering into an agreement to acquire the assets from funds managed by Weston?
A. I did not.
Q. Prior to receiving this agreement in June, did you have any awareness that someone named Ymer Shahini had assisted the company and its management in conducting its due diligence for the assets of Weston?
A. I did not.
MR. TREMONTE: Asked and answered, your Honor.
THE COURT: Overruled.
Q. Turning to the third listed service, section C, prior to your receipt of this document in June 2010, did you have any awareness that someone named Ymer Shahini had, following the consummation of the Weston transaction, identified any other potential hedge fund assets or bank-owned assets for potential acquisition by Gerova?
A. I did not.
Q. Now, turning to the bottom of this document, the section entitled "success fee." Could you read that section for us?
A. Sure. "Success fee. In the event that the company shall consummate the acquisition of control of certain Weston assets, the consultant shall receive the fee set forth below in this section 2, labeled success fee. Such success fee shall be payable on or immediately following the consummation of the final closing of the acquisition of control of Weston, with

such final closing defined as delivery of all conditions required to consummate a transaction between the company and Weston or its affiliates."

Q. Turning to the second page, it says, "Such success fee shall be as follows."

If we go to the second page, the top of that page, can we pull out Section A?

Could you read the first sentence of that section?

A. "Cash fee of 2 percent of the total implied valuation of Weston payable by wire transfer of immediately available funds to an account designated by the consultant."

Q. What was the implied valuation of Weston?

A. $114 million.

Q. So if this agreement entitles Mr. Shahini to 2 percent of the total valuation of Weston for introducing Gerova to Weston, what is the fee amount that Mr. Shahini would be entitled to?

A. It would be $2,280,000.

Q. Now, could you turn to the last page of this document, that is, page 6.

Who does it appear has signed this document for the consultant?

A. It appears that Ymer Shahini.

Q. Under the company, there isn't a typewritten name under the byline, is there?

A. No, there is not.

Q. Do you know for certain whose signature this is?
A. I do not.
Q. When you received this document, did you have a guess as to whose signature it might be?
A. My guess was that it was Marshall Manley.
Q. What made you believe that it might be Marshall Manley?
A. Just looking at the last name, it looked like M and some L-Y, so I assumed it was Marshall Manley.
Q. Did you ever have a conversation with Mr. Manley about the signature on that document?
A. I did.
Q. Approximately when did that conversation occur?
A. It occurred after Marshall Manley had left the company sometime -- I don't know the exact date, but it was sometime of significance after Marshall Manley had left the company.
Q. What do you believe Mr. Manley said to you about that signature?
THE COURT: Rephrase the question.
Q. What did Mr. Manley say to you about that signature?
A. When I asked him about it, he said that he had signed the document.
Q. Did he explain any of the circumstances of the signing?
A. He had told me that Gary Hirst had instructed him to sign the document.
Q. Now, prior to receiving this consulting agreement in June

2010, had you ever been told that Gerova owed a fee to Mr. Shahini in connection with the Weston transaction?
A. No.
Q. Now, did you share this with the other people you were meeting with at Hodgson Russ, the auditor and accountant, Mr. Puglisi and Mr. Riscica?
A. I did.
Q. Can you look at what has been marked as Government Exhibit 604 in evidence?
MS. HECTOR: Can we pull that up on the screen?
Can we enlarge the top of that document?
Q. Who is this e-mail from and to?
A. This is an e-mail from me to Joseph Puglisi and Ken Riscica.
Q. What is the date?
A. June 15, 2010.
Q. What is the subject?
A. Weston commission agreement.
Q. What do you say to Mr. Puglisi and Mr. Riscica?
A. "Joe and Ken, this is the agreement that needs to be included in the transaction costs and will be reflected in the MD&A in the 20-F. Michael."
Q. What is attached to this e-mail? If you can turn to the second page, there is an attachment.
Does this look like the consulting agreement that we

just reviewed?
A. Yes, it does.
Q. Prior to your receiving this consulting agreement in those offices of Hodgson Russ, had it been included in the transaction costs that were compiled in connection with the Weston transaction?
A. Can you repeat the question?
Q. Prior to receiving this document, had it been included in the transaction costs of the Weston transaction?
A. No.
Q. Had it been included in the agreement that had been collected in connection with the compiling of those transaction costs?
A. No.
Q. What was your reaction to receiving this document for the first time that day?
A. I was a bit shocked.
Q. What was shocking about it?
A. One is it was very late in the process. We were aware all throughout the closing process of all of the agreements that existed in connection with the closing. Number two is that it was to an individual in the Czech Republic.
Q. What was surprising about that?
A. Well, I just didn't understand how an individual in the Czech Republic could be introducing parties, first of all, in

the United States, and second of all, in New York.

MR. TREMONTE: Objection. Speculation.

THE COURT: Overruled.

Q. Now, in general, in your experience at Gerova as the CFO, were you apprised of consulting agreements that Gerova had entered into?

A. Yes.

Q. Why would you be apprised of such agreements?

A. I had to have the documentation to be able to record the transactions, and also, whether they would be a liability to the company or whether they would be in connection with a payment by the company, they all have to have underlying documentation.

Q. Who typically would be the person to apprise you of such agreements?

A. Gary Hirst.

Q. Were you generally apprised of such financial obligations of the company in close proximity to when they were incurred?

A. Yes.

Q. So what did you do after receiving this document?

A. My recollection is that I telephoned Gary Hirst.

Q. Where were you when you made that call, if you recall?

A. I believe I was in the offices of Hodgson Russ.

Q. What did you say to him and what did he say to you in response?

MR. TREMONTE: Objection.

THE COURT: Offered for what purpose?

MS. HECTOR: Statement of the defendant, for the truth.

THE COURT: I will allow it.

A. Repeat the question.

Q. So when you called Mr. Hirst after receiving this document, what did you say to him and what did he say to you?

A. My recollection is that I asked him if this was a legitimate document and that it should be included in the recording of the closing costs, and he assured me that it was in fact a legitimate document.

Q. What, if anything, did he say about whether Ymer Shahini had performed the services in the document?

A. I don't recall asking him that.

Q. Did you know at the time whether the fee that was owed under the terms of this agreement had in fact been paid to Mr. Shahini?

A. I did not.

Q. You did not know or it did not?

A. I did not know.

Q. Well, were you in control of disbursements of the company?

A. Yes.

Q. Did you keep records of those disbursements?

A. Yes, I did.

Q. Did you have to clear such disbursements with anyone?
A. Yes.
Q. Who was that?
A. Typically, Gary Hirst.
Q. Do you recall having made any disbursements in connection to someone named Ymer Shahini?
A. No, I had not made any disbursements in connection with anybody named Ymer Shahini.
Q. After you received it, how, if at all, was this consulting agreement accounted for on the company's books and records?
A. We recorded the liability. The next period of time that we actually prepared the set of financial statements was as of June 30, 2010, and the liability to Ymer Shahini in connection with this consulting fee was included as an obligation of the company in those financial statements.
Q. Now, the consulting agreement that we just looked at on Government Exhibit 250 is dated January 22, 2010 correct?
A. Yes.
Q. At that time, were you CFO of Gerova?
A. I was.
Q. Were you attending board of directors' meetings?
A. I was.
Q. To your knowledge, were the consulting services agreement provided to Mr. Shahini ever discussed at a board meeting?
A. Not to my knowledge.

Q. Was a fee owed to Mr. Shahini ever discussed at a board meeting, to your knowledge?
A. Not at that time.
Q. Up until that time. I'm sorry.
THE COURT: I'm sorry. Is that a question or is that testimony from you?
MS. HECTOR: I am sorry. I apologize, your Honor.
THE COURT: Are you going to ask a question?
MS. HECTOR: Yes.
Q. Now, turning back now --
THE COURT: It had not been discussed up until that time?
THE WITNESS: That time.
THE COURT: That's your testimony?
THE WITNESS: That's my testimony.
THE COURT: Thank you.
Next question.
Q. Now, turning back to Government Exhibit 201A, the amended 20-F filing.
MS. HECTOR: Could you pull that up?
Q. Could you remind me again when this amended 20-F was filed?
A. I believe it was June 16.
MS. HECTOR: Now, could we also go back to Government Exhibit 604, which we have previously looked at.
Can we just highlight that?

Q. What is the date of this e-mail again?
A. June 15.
Q. What are you providing to Mr. Puglisi and Mr. Riscica at this time?
A. The Weston commission agreement with Shahini.
MS. HECTOR: Now, can we pull up what has been admitted into evidence as Government Exhibit 615.
Q. Do you recognize this e-mail chain?
A. I do.
MS. HECTOR: Starting at the e-mail at the bottom of this e-mail chain, can we highlight that e-mail?
Q. Who is this from and to?
A. This is from me to Gary Hirst.
Q. What is the date of this e-mail?
A. Tuesday, June 15, 2010.
Q. What is the subject line?
A. Revised language.
Q. Could you read that for us?
A. "The company estimates that it has incurred approximately $23,500,000 in costs directly attributable to the business combinations relating to attorneys, accountants and other advisers' fees."
Q. Could you continue?
A. "Of this amount, approximately 10,400,000 was satisfied through the issuance of 1,391,667 ordinary shares and certain

private warrants. In addition, there are approximately $24 million in unpaid management fees due to the managers of Stillwater funds that are to be paid out of available cash flow, as determined by the company."

Q. How does Mr. Hirst respond to that revised language in the e-mail directly above it?

A. He responds, "This is correct and perfect. Approved."

Q. Do you recall where you got that revised language?

A. I do not.

Q. Now, if we could turn back to Government Exhibit 201A, the amended 20-F, at page 105.

MS. HECTOR: Could we highlight the section towards the bottom of the paragraph that starts, "The company estimates that it has incurred."

Q. Now, Mr. Hlavsa, is that language the same as we just read in Government Exhibit 615?

Unfortunately, I can't compare them on this screen, but you have the two documents still in front of you in hard copy if you'd like.

A. It appears to be.

Q. What does this state is the total approximate cost of the business combinations related to attorneys, accountants and other advisers' fees?

A. $23,500,000.

Q. Do you recall, is that the same figure that was in the

original 20-F filing, the one on June 2, 2010?
A. It was.
Q. So why didn't the knowledge of the Shahini consulting agreement cause a revision to that estimate?
MR. TREMONTE: Objection.
THE COURT: If you know.
A. I don't know.
Q. In your experience as a CFO with responsibility over regulatory filings, are there instances where new costs are identified that do not need to be disclosed --
MR. TREMONTE: Objection. Leading. And asked and answered.
THE COURT: Why don't you rephrase it if you want to ask it.
Q. As a CFO, are you responsible for regulatory filings?
A. Yes.
Q. Have you been responsible for regulatory filings in that kind of capacity both at Gerova and at other companies?
A. Yes.
Q. Have you ever been confronted with knowledge of additional costs that weren't included in a filing?
MR. TREMONTE: Objection. Relevance.
THE COURT: I will allow it.
A. Yes.
Q. Are there instances, if any, where new costs are identified

but do not need to be included in an amendment?

MR. TREMONTE: Objection, your Honor.

THE COURT: I will allow it.

A. Yes.

Q. In what kind of circumstances can that occur?

MR. TREMONTE: Objection, your Honor.

THE COURT: I will allow it.

A. The determination is materiality. If the issue is material, then revisions and amendments are made. In this circumstance, the change was not made.

Q. In the amended language that we just reviewed and the original language of the 20-F, is the word "approximately" used?

A. Yes, it is.

Q. Now, if we look at the language in the amended 20-F and compare it to the original 20-F, page 50 of the original 20-F, if we could look at that, 201.

MS. HECTOR: Can we cull out the language, "The company estimates that it has incurred approximately," that paragraph.

If we can compare that to the amended 20-F.

THE COURT: Exhibit number.

MS. HECTOR: Exhibit 201A.

And specifically page 105 of the exhibit. The same paragraph, beginning "the company estimates."

Q. Now, do you see the addition of the language in the amended 20-F of the phrase "and certain private warrants"?
A. I do.
Q. Do you know what is referred to there?
A. I do not.
Q. At the time that the amended 20-F was filed, were you aware of warrants issued to Ymer Shahini in connection with satisfaction of the consulting agreement?
A. I was not.
Q. Now, could we turn to Government Exhibit 609, which is in evidence.

What is this document?
A. This is an e-mail from me to Joseph Bianco.
Q. When is it dated?
A. August 4, 2010.
Q. What is the subject?
A. Weston consulting agreement.
Q. Could you read this e-mail for us?
A. It says, "Joe, found only agreements. I recall it was trying to be settled for stock, but I am not sure it ever was. Gary wanted to make sure we had recorded it as a liability."
Q. Can you explain to us what the phrase "settled for stock" means?
A. I cannot.
Q. At the time you sent this e-mail to Mr. Bianco, were you

aware of any settlement of the Shahini consulting agreement whatsoever?
A. I was not. I did not.
Q. Mr. Hlavsa, did you eventually come to learn how the success fee for the Shahini consulting agreement had been paid?
A. I did.
Q. Approximately when did you first learn that?
A. In September of 2010.
Q. So is that approximately three months after you first learned of the consulting agreement?
A. Yes.
Q. And how had the success fee been paid?
A. The success fee had been paid by providing Ymer Shahini with warrants in full payment of his consulting fee.
Q. How did you first come to learn about the fact that warrants had been provided to Mr. Shahini?
A. I was actually finalizing the preparation of the June 30 financial statements, and part of that process is to make absolutely sure that the equity section of the balance sheet is correct. To do that, I requested a listing from Continental Stock Transfer to the common shares -- well, all the shares were outstanding at that time, and after I received that list, I saw that there were three instances of share issuances that I did not have knowledge of nor were recorded in the company's books and records.

Q. You had mentioned before that there are different kinds of shareholder lists that can be requested from Continental. What kind of shareholder list would you have requested for the purposes you just identified of working on your financial statements?
A. This was a transactional share list.
Q. How often do you perform that task of requesting a transactional list and reconciling that with information you were aware of of outstanding share issuances?
A. Well, it can be done really at any time. It's important that it's done prior to the issuance of any financial information to either Securities and Exchange Commission or anybody else.
Q. So when prior to September 2010, when you were working on these financial statements, do you know when the last time you would have pulled a transactional list of that sort?
A. It would have been in connection with the year end audit of December 31, 2009.
Q. What did you do after you received the shareholder list?
MS. HECTOR: I'm sorry. May I rephrase?
Q. Can I pull up for you what has been marked as Government Exhibit 508.
What is this document?
A. This is a listing of the shares that were issued in a transactional listing that's received from Continental Stock

Transfer.
Q. Is this the transactional type of list that you have described?
A. Yes, it is.
Q. Can you just walk us through? What is provided on this list? What are the headers and what is the information here?
A. The first column is the date of the transaction. The second one is any comments with respect to why the transaction occurred. The third column is the number of common shares that were issued, the number that were authorized. And then the last column is the cumulative total of the number of shares that would be outstanding.
MS. HECTOR: Now, could we just page through this document for a moment, Ms. Sheinwald, so that Mr. Hlavsa can be familiar with it.
Q. Is this the exact document that you would have received when you requested the transactional list in September 2010?
MR. TREMONTE: Objection. The question is garbled.
THE COURT: Try rephrasing.
Q. Is this the exact document you received from Continental in September 2010 when you requested the transactional list?
A. No.
Q. How do you know that?
A. There are actually dates after September on this document. So it must have been produced by them subsequent to that time.

Q. But is this the kind of document that you would have received?
A. Yes.
Q. Now, if we look at page 4 of this document and focus in on the date 5/17/10.
Now, before we talk about that specific entry, what was it on this document when you received it that caught your attention?
A. That there were 5,333,333 shares issued.
Q. Prior to receiving this document, were you aware of that?
A. I was not.
Q. Now, at this time in September 2010, were you aware of whether there were a large amount of free-trading shares of Gerova in circulation at the time?
A. I don't believe --
MR. TREMONTE: Objection. Form of the question.
THE COURT: Try rephrasing it.
Q. At around this time, in your position as CFO of Gerova, what, if anything, was your perception of the volume of free-trading shares in circulation?
A. While I did not keep accurate track of which shares were free trading, I had knowledge that there weren't a significant amount of shares that were traded.
Q. What does it mean to be free-trading shares?
A. Those are the shares that were able to be traded in the

open market, bought and sold.
Q. So are free-trading shares restricted or unrestricted?
A. Those would be termed unrestricted; they are able to be traded.
Q. I would like to call your attention to what is in evidence as Government Exhibit 610.
What is this document?
A. This is an e-mail from me to Joe Bianco.
Q. What is it dated?
A. Dated August 5, 2010.
Q. What is it that you say to Mr. Bianco at this time?
A. I said, "Joe, in case you are interested, see summary at bottom of page for all shareholders. It shows that we have 10,989,552 shares in the float as of July 31, 2010."
Q. What does "in the float" mean?
A. Those are the shares that are freely tradeable.
Q. So, Mr. Hlavsa, what, if anything, did you do in response to receiving the shareholder transaction list and seeing the issuance of the 5,333,333 shares?
A. I did two things. First of all, I contacted Continental Stock Transfer and asked them for a copy of the documentation that supported the issuance of the shares. Secondly, I contacted Gary Hirst asking for any information he had about the issuance of these specific shares.
Q. So let's start with Continental. What, if anything, did

you receive from Continental?

A. My recollection is we received two documents from Continental. One being the instruction letter asking them to issue the shares. And attached to that was an attorney's opinion that provided a legal opinion that the shares could be issued.

Q. I would like to turn your attention to Government Exhibit 500, and specifically page 2 of that document.

Is this one of the documents you received from Continental?

A. I believe it is.

Q. Who is this from and to?

A. This is a letter from Gary Hirst to the Continental Stock Transfer and Trust Company regarding the shareholder list.

Q. Let's focus on the second paragraph of this letter starting, "Based upon the foregoing."

I'm sorry. Could we start on the first paragraph that starts, "On Friday."

What does Mr. Hirst inform Continental of?

A. He informs that on Friday, May 21, Gerova received a properly executed exercise notice in connection with the class 1 redeemable warrant agreement.

Q. Now, focusing on the second paragraph. What does Mr. Hirst ask Continental to do?

A. It authorizes Continental Stock Transfer and Trust Company to issue in electronic form 5,333,333 ordinary shares. And the original issue date for this share should be May 27.

Q. Just to be clear, when is this letter dated?

A. It's dated May 26, 2010.

Q. So is that date prior to the conversation you had with Mr. Hirst that you described in June 2010 when you were first apprised of the Shahini consulting agreement?

A. Yes, it is.

Q. At the time of that conversation, what, if anything, did Mr. Hirst tell you about the fact that 5,333,333 shares of stock had been issued in connection with that agreement?

A. He did not tell me anything.

Q. During that conversation, what, if anything, did Mr. Hirst tell you about the existence of a warrant agreement?

A. He did not mention that.

Q. Now, who to your knowledge had the authority at Gerova to cause Continental to issue shares of Gerova stock?

A. The only one that ever communicated officially with Continental with regard to issuance of shares was Gary Hirst.

Q. Now, focusing on the third paragraph of this letter, could you read that for us, starting with "please"?

A. "Please also consider this authorization to rely on the attached legal opinion provided by Barry Feiner, Esq. in connection with the free transferability of the shares, which should be delivered without restriction."

Q. What do you understand without restriction to mean?
A. Free trading.
Q. Now, turning to page 4 of this document, is this the attached legal opinion that's referred to?
A. It is.
Q. Now, is this another one of the documents that you were provided by Continental in response to your inquiry regarding the 5 million share issuance?
A. Yes.
Q. When you received this letter, did you review its contents?
A. Just generally.
Q. Looking at this letter, do you see reference to something called Regulation S?
A. I do.
Q. Now, just turning to the last paragraph of the letter on page 5, what, if anything, does this letter say about whether the shares being issued to Ymer Shahini could be restricted or unrestricted?
MR. TREMONTE: Objection, your Honor. Is the question just about what the document says or is it an interpretation of what it means?
MS. HECTOR: It's a question about what the document states.
THE COURT: I will allow it.
A. It says that, in the opinion of Barry Feiner, that the

shares are exempt from registration and therefore would not contain any restrictions.

Q. When you received this document, were you familiar with Barry Feiner?

A. Just peripherally.

Q. Now, you said you also spoke to Mr. Hirst after learning of the 5-million-plus shares, correct?

A. Yes.

Q. Why did you reach out to Mr. Hirst?

A. Because I knew he was the individual who authorized the -- he was the only individual at the time that authorized the issuance of shares.

MS. HECTOR: Now, Ms. Sheinwald, please don't pull these up on the screen.

Q. Mr. Hlavsa, I would like to turn your attention to what is in front of you in your folder as 600A, B, C and D. And if you could take a moment to just look at those four documents.

A. OK. I have.

Q. Do you recognize those documents?

A. I do.

Q. What are they in general?

A. They are documents created from Skype chat, my Skype chat.

Q. Could you just explain to us what is a Skype chat?

A. Skype chat is a way to communicate with another person over the Internet, where you can type your message in and send it to the other person and it shows up on the other side to the person who is the recipient.

Q. How were these documents created?

A. I created them.

Q. How did you do so?

A. I did by -- Skype does not have a function whereby you can retain the documentations inside the program. So what I did is I highlighted the chats, the Skype chats, for a period of time, right clicked on them to copy them and pasted them onto a Word document and then retained them.

Q. Did you alter those chats in any way when you saved them?

A. I did not.

MS. HECTOR: The government offers Government Exhibit 600A through D.

MR. TREMONTE: Over our previous objection, your Honor.

THE COURT: They are received.

(Government's Exhibits 600A, 600B, 600C and 600D received in evidence)

Q. If we can focus, Mr. Hlavsa, on 600A first.

MS. HECTOR: And now, Ms. Sheinwald, we can pull it up on the screen.

Q. So, Mr. Hlavsa, starting at the top of this page, there's a notation 9/27/2010, 4:52:45 p.m. Do you know what that notation refers to?

A. It's the date and the time that the actual Skype chat took place.
Q. What does Mr. Hirst state to you?
A. He states, Gary Hirst, "I will get you the documents, but meanwhile here are the transactions: One, January 2010 finder's fee agreement executed with Shahini for Weston, cash of over 2 million to be paid within 30 days I think. Number two, March 2010, Shahini agrees to take warrants at the current market price of the warrants as full settlement. And number three, in May Shahini exercises the warrants cashless at the current market price of the shares resulting in the issuance of the shares."
Q. How do you respond at 4:57 p.m.?
A. I respond, "I will need the agreements (except for the finder's fee which I have)."
Q. What are you referring to when you say "except for the finder's fee which I have"?
A. That's the consulting agreement signed with Ymer Shahini.
Q. Is that the agreement you had received in June?
A. Yes.
Q. How does Mr. Hirst then respond at 8:25 p.m.?
A. He responds, "Is this urgent for some reason or would a few days to gather the documents be OK?"
Q. How do you respond?
A. I responded that, "We are recording all of the equity

issuances for the financials. Just cannot finish without it."
Q. Now, moving down the page to 9/28/2010, at 11:31:11 a.m., what does Mr. Hirst say to you?
A. He says, "I have received the Shahini warrant."
Q. Then there are two notations that say, "Gary Hirst, Gary Hirst." Do you know what that?
A. Those are, when files are transferred through Skype, on my computer they would show up as a document, but on the copy-paste procedure they show up as the name Gary Hirst, which means there were two documents received from Gary Hirst at this time.
Q. Do you know what documents Mr. Hirst provided to you in connection with the warrant?
A. I do recall one was the warrant itself. I do not recall what the other one was.
Q. Now, Mr. Hlavsa, did you save the chat about this warrant agreement at the time?
A. I did.
Q. Why did you do that?
A. This was a transaction that was very unusual to me. So I wanted to make sure that I retained the discussion at this time around this transaction. So I actually copied and pasted it into a Word document and saved it.
Q. Now we are going to turn to Government Exhibit 251, which is in evidence.

MS. HECTOR: Your Honor, I actually have hard copies of this document because it's fairly dense. Would it be permissible to hand hard copies to the jurors?

THE COURT: If the document is in evidence, then you may publish it to the jury.

MS. HECTOR: Thank you.

Q. Now, Mr. Hlavsa, do you recognize what this document is?
A. Yes, I do.
Q. Is this one of the documents that Mr. Hirst provided to you?
A. It is.
Q. When is this agreement dated?
A. March 29, 2010.
Q. Could you turn to the last page of this document?

By whom is it signed on the last page?
A. Gary Hirst.
Q. Now, looking back at the first page, is this document dated before June 2010, the date you learned of the Shahini consulting agreement?
A. Yes, it is.
Q. Is that before your conversation with Mr. Hirst regarding the consulting agreement?
A. Yes, it is.
Q. After receiving this agreement, did you review its terms?
A. I did.

Q. Before we dive into the language of this agreement, could you just explain to the jury in general what this agreement provides?
A. This is a warrant. A warrant is a security issued by the company which gives the holder of the warrant the ability to buy a share of stock at a certain price within a certain period of time.
Q. So now let's look at the actual language.
Let's focus on the first whereas clause on the first page.
Could you read that for us?
A. "Whereas, the Gerova Financial Group Ltd., the company, and Ymer Shahini, the holder, agreed to a fee payable upon performance pursuant to which the holder would be paid a fee, defined as the fee of 2 percent of the transaction value in connection with the acquisition by the company of certain assets acquired from affiliates of Weston Capital Management."
Q. Can you explain what that means in layman's terms?
A. It means that Gerova had entered into an agreement with Ymer Shahini to pay him a fee in connection with the Weston assets.
Q. What percentage of the transaction value was agreed to?
A. 2 percent.
Q. What was the total value of the Weston transaction?
A. $2,280,000.

Q. That was the total value of the Weston transaction?
A. The Weston transaction? I apologize.
Q. What was the total value of the Weston transaction?
A. $114 million.
Q. So what would the math result in 2 percent of that?
A. $2,280,000.
Q. Now, turning to the second whereas clause on this document, what does this state?
A. This states that on January 22, the company consummated a series of acquisitions, including the acquisition of certain assets from affiliates to Weston Capital, totaling $114 million, and the fee of 2 percent became due and payable.
Q. Now, moving to the third whereas clause. Could you read that for us?
A. It says, "As of the date of this agreement, the fee remains unpaid and the parties desire to settle any disputes through full payment of the fee by delivery of company securities consisting of warrants."
Q. Can you explain to us what that means in layman's terms?
A. It means that the company has agreed with Ymer Shahini that instead of paying cash of $2,280,000, it instead would provide warrants.
Q. What is a warrant?
A. A warrant gives the holder the ability to buy a share of stock at a certain price for a certain period of time.

Q. Now, the fourth whereas clause. Can you read that section?

A. "The parties agree that the value of the class 1 warrants being delivered is equal to the fee as of the date as determined by a comparable estimate only utilizing a reference price of the 30-day average closing price of the public warrants of the company immediately prior to this agreement. And the holder agrees that all claims are settled irrespective of the future value of class 1 warrants, which the holder understands could be valueless if the company's common stock does not appreciate above the strike price of the class 1 warrant before the expiration date set forth hereinbelow."

Q. What does that mean in plain English?

A. It means that the warrants that are exchanged are equal to the fee that was owed. And it also says that the value of the warrants that are exchanged, so you can determine the number of warrants, are priced based on 30 days of the publicly traded warrants immediately prior to this agreement.

MR. TREMONTE: Objection.

THE COURT: What is the basis for your understanding of what it means?

THE WITNESS: Just reading the agreement.

THE COURT: Thank you. Next question.

Overruled.

(Continued on next page)

BY MS. HECTOR:

Q. Mr. Hlavsa, just so that I understand correctly. Does that paragraph suggest that the value of the warrants on the date of this agreement is equal to the fee owed, that 2.28 million that you've described?

A. Yes.

Q. Now, turning to the second page of this agreement, the section entitled "for value received". How many warrants was Ymer Shahini entitled to under the terms of this agreement?

A. In this paragraph, it indicates there were 11 million warrants.

Q. The warrants are the right to purchase shares of Gerova at what price under the terms of this agreements?

A. It indicates here $7.50 per share.

Q. Is that sometimes referred to as a strike price of the warrants?

A. Correct. It's defined here as the warrant price, but strike price is the same terminology.

Q. Okay. Let's flip back to the first page of the document and that fourth whereas clause.

Did you perform an independent calculation to determine whether, in fact, the value of the warrants as of March, 2010 was equal to the fee of $2.28 million?

A. I did.

Q. I'd like to turn your attention to what's in evidence as

Government's Exhibit 245B. What is this document?
A. This is a document prepared by me on Excel, which is my calculation of the Shahini warrant pricing.
Q. Why did you create this document?
A. I thought I needed to validate and verify that the terms included in the warrant agreement agreed to the number of warrants that were provided under the agreement.
Q. Looking at the first page of this document, in the overview section, could you read that section for us?
A. Sure. It says, "The Shahini warrant agreement indicates that the number of warrants to be issued will use the 30-day average closing price of the public warrants immediately prior to the date of the agreement, which was March 29th, 2010."
Q. Now, under that statement, there's a listing entitled "warrant pricing history". What is that, warrant pricing history? What does that mean?
A. What I did is I took 30 days prior to the date of the warrant agreement and indicated both the date and the price that the public warrants were trading at at that time, the closing price.
Q. Do you recall where you got those prices?
A. It's all a matter of public information. It would either be under Yahoo, or Bloomberg, or one of the financial reporting sites.
Q. Turning to the second page of this document. Did you add

up those numbers and calculate the 30-day average closing price?
A. I did.
Q. What was that amount?
A. The amount was .2813, which is a little over 28 cents.
Q. Now, at the bottom of this document there's a section entitled "calculation". Could you walk us through the calculation that you performed?
A. Yes. The first line is the financial obligation of the company, which is the $114 million value of the Weston assets, times 2 percent, which is the $2,280,000. Then, if you use the average 30-day closing price that was calculated above at .2813, the warrants to be issued, you divide the .2813 into the $2,280,000, and the calculation comes out to be the number of warrants to be issued, which are 8,104,746 warrants.
Q. So am I correct that by your calculation, 8,104,746 warrants would be worth the financial obligation that you concluded was due of 2.28 million?
A. Yes.
Q. How many warrants were actually issued under the terms of the agreement to Mr. Shahini?
A. 11 million.
Q. So what does the remainder of this calculation indicate?
A. What happens is, because more warrants were issued than were -- that should have been issued in full satisfaction of

the $2,800,000, the next line is additional warrants to be recorded. There actually was 2,895,254 warrants that still needed to be recorded as a transactional expense for the company.

Q. How did that impact the company's books and records?

A. What happened is, is from the accounting terms, we had to establish a value for those warrants that were to be issued, so we took the closing price at the date they were issued and came up that an additional expense of the company was incurred of $752,000.

Q. That number, 752,766, what does that reflect?

A. It reflects the differences between the warrants that were issued and the warrants that should have been issued.

Q. By your calculation, what was the value of this warrant agreement to Ymer Shahini as of March 29th, 2010?

A. It was over $3 million.

MS. HECTOR: Now, if we could turn back to the actual warrant agreement, Government's Exhibit 250, let's look at page 2 of this document. There's a section entitled "exercise of warrant". It's number 3. Do you see that section? This is page 2, number 3. If we could do the whole section. Thank you.

Q. What does it mean to exercise a warrant?

A. In exercising the warrant, you trade the warrant for the appropriate amount of shares that are called for under the

warrant agreement.
Q. Does this agreement include a notice period for exercise?
A. It does.
Q. What is that notice period?
A. It says in the body of this paragraph, "Subject to a 61-day prior notice."
Q. What was your understanding when you reviewed this document about what that means, the 61-day notice?
A. My interpretation -- and I'm not an attorney -- but my interpretation is, is that you give the company 61 days or more notice that you're going to exercise your warrants in exchange for stock.
Q. Now, according to the terms of this agreement, can the warrants be exercised in one of two ways?
A. Yes, they can.
Q. What are those two ways?
A. The two ways are cash and cashless.
Q. Let's start with cash. How would you exercise a warrant for cash?
A. You would pay the warrant price, in this case, $7.50.
Q. What would you get in exchange for paying that?
A. You would get one share of stock for every warrant that you exercise.
Q. Now, you mentioned that an alternative way is called cashless. What is a cashless exercise of a warrant?

A. The cashless is, instead of the holder of the warrant actually having to pay for the shares of stock at the warrant price of $7.50, they only get the shares attributable to the difference between the market price of the stock at the time and the warrant price.
Q. The market price of the stock at what time?
A. The time they exercise the warrant.
Q. Would you, in that circumstance, get fewer shares than the amount of warrant you exercised?
A. Yes.
Q. But would you have to outlay any cash to get them?
A. You would not.
Q. Turning to page 3 of this document. At the top it says, "The document includes a formula for determining how many shares you would receive if you utilized the cashless exercise method."
A. Yes, it does.
Q. Turning back to the Skype chat 600A. Again, the message from Mr. Hirst at the very top of this document on 9/27/2010, what does he explain to you as number 3 of the transactions?
A. He states, "In May, Shahini exercises the warrants cashless at the current market price of the shares resulting in the issuance of the shares."
Q. Did Mr. Hirst provide you with the exercise notice?
A. I believe he did, yes.

Q. Could you turn to Government's Exhibit 603. This is already in evidence. Do you recognize this document?
A. I do.
Q. What is it?
A. It's the exercise notice regarding these warrants.
Q. When is it dated?
A. It's dated May 21st, 2010.
Q. Who appears to have signed this document?
A. It appears to be the signature of Ymer Shahini.
Q. And how many warrants does this document indicate that Mr. Shahini intends to exercise?
A. 10 million.
Q. Does this document indicate whether he will be proceeding by the cash or the cashless exercise method?
A. The box indicating "cashless" is checked.
Q. What, if anything, concerned you about this document when you received it?
A. Two things. One is, is that there are only 10 million warrants that were being exercised instead of the 11 million that were able to be exercised. While it's not mandatory that the complete exercise take place for all of them, it typically is, you exercise all your warrants at the same time.

The second thing is, is that the date of the agreement is May 21st, which is not within the 61-day notice period.
Q. When you say the date of the agreement is May 21st, are you

referring to this notice?
A. I'm sorry, the date of the exercise notice is May 21st.
Q. Okay.
A. Let me clarify.
Q. Mr. Hlavsa, I'd like to now turn your attention to what's in evidence as Government's Exhibit 600B. At the bottom of this page, 9/30/10 at 11:16:53, if you look at that portion of this chat, what does Mr. Hirst say to you?
A. He says, "Here's the warrant calculation," and then there's a file transfer.
Q. How do you respond?
A. "Thanks."
Q. I'd like to now turn your attention to Government's Exhibit 601. What is this document?
A. This is the calculation that was provided indicating how many shares would be received.
Q. The calculation that was just provided by Mr. Hirst?
A. Correct.
Q. Now, when you received this document, what, if anything, did you do?
A. I reviewed it.
Q. Did you check the calculation provided?
A. I did.
Q. What, if any, problems did you see with this calculation?
A. There are two things wrong with this calculation. On

May 19th, 2010, the closing price of the stock was not $15.11, and the strike price indicated in this calculation is not the strike price that's contained within the warrant agreement.

MS. HECTOR: Can we just look back at the warrant agreement quickly, Government's Exhibit 251 on page 2? Ms. Sheinwald, could you just highlight or pull out that paragraph called "value received", and can we see what is the strike price provided in this warrant agreement? Would you highlight the strike price?

Q. Mr. Hlavsa, what is the strike price provided here?

A. $7.50 per share.

Q. Now, turning back to Government's Exhibit 601 again. You said there was a problem with the closing prices?

A. Correct.

Q. What do you see as the problem with the closing prices?

A. The stock actually closed at a different number on May 19th, 2010.

MS. HECTOR: Could I just have one second, your Honor?

THE COURT: Yes.

MS. HECTOR: Ms. Sheinwald, could you pull up for us for one moment Government's Exhibit 900? Could you scroll to the price on 5/19/2010 on this document?

Q. What is the price provided on this document?

A. $15.31.

Q. And this is Government's Exhibit 900, in case I didn't say that.

So focusing back now on Government's Exhibit 601, based on the calculation provided in this document, how many shares does it say would result from the calculation to be issued to Mr. Ymer Shahini?

A. 5,333,333.

Q. Do you recognize that number?

A. Yes, I do.

Q. Did you recognize it at the time?

A. Yes, I did.

Q. Why did you recognize it?

A. It's the exact number of shares that were canceled in connection with the repurchase of the shares from Marshall Manley in the settlement agreement.

Q. Did you know whether the shares that were issued to Ymer Shahini in connection with the exercise of his warrants were restricted or unrestricted?

A. I did.

Q. And what were they?

A. Unrestricted.

Q. How did you know that?

A. The instruction letter to Continental indicated that they would be provided in electronic form, and the legal opinion that was provided by Barry Feiner indicated that they should be without restriction.

THE COURT: Let me go back here. Sir, did I understand you to say that the strike price -- what's the exhibit number of the exhibit on the screen?

MS. HECTOR: 601.

THE COURT: The strike price on 601 does not correspond to the strike price in Government's Exhibit 251?

THE WITNESS: The warrant agreement, correct.

THE COURT: The warrant agreement.

THE WITNESS: Yes.

THE COURT: What is the difference between the two strike prices?

THE WITNESS: The warrant agreement calls for $7.50, the calculation was done at $7.

THE COURT: All right. The difference in the market price, the closing price of the stock on the day in question, between what's reflected in 601 and what it actually was, can you tell me what that was?

THE WITNESS: The actual closing price was $15.31, the calculation has $15.11.

THE COURT: Thank you.

Next question.

MS. HECTOR: Thank you, your Honor.

BY MS. HECTOR:

Q. Mr. Hlavsa, prior to receiving the warrant agreement from Mr. Hirst in that Skype chat, had anyone at Gerova informed you

of its existence, that is, the fact that Gerova had entered into a warrant agreement with Ymer Shahini?
A. Not that I can recall.
Q. And you were secretary of the board. To the best of your recollection, was the board of directors ever apprised of the warrant agreement prior to you receiving it from Mr. Hirst in September?
MR. TREMONTE: Objection.
THE COURT: You may answer.
THE WITNESS: Could you repeat the question?
Q. To the best of your recollection, had the board of directors been apprised of the existence of the warrant agreement prior to you receiving it from Mr. Hirst in September, 2010?
A. No, not to my recollection.
MR. TREMONTE: Same objection.
Q. What was your reaction to receiving the calculation?
A. I was shocked that no one from the financial area was involved in these calculations with respect to the number of shares that would be issued under the warrant agreement, and also the exercise of the warrants for common stock.
THE COURT: What do you mean by "in the financial area"?
THE WITNESS: Since the financial area reported to me, there was nobody, either myself or anyone that reported to me

that had any involvement in the calculations, which I thought was very unusual because usually, the financial department would be involved in these calculations.

THE COURT: Thank you.

Q. Now, Mr. Hlavsa, if you had known back in June when you were preparing the 20-F and the amended 20-F that the consulting agreement had been satisfied with the warrant agreement and that 5,333,333 shares had been issued to Ymer Shahini, would it have been reflected in the 20-F or the amended 20-F, in your view?

A. Yes.

Q. Why?

A. It would be very material to the company and the reader of that document should know that that transaction had occurred.

Q. After you reviewed the calculation, what, if any, conversations did you have with Mr. Hirst about your reaction to the calculation?

A. I asked him why no one was involved from the financial area in the calculation.

Q. And do you remember what he said to you in response?

A. His response was that a gentleman with Hodgson Russ, Shant Chilean, had done the calculations.

Q. Do you remember anything else about that conversation?

A. Can you clarify the question?

Q. Sorry. Do you remember anything else about that conversation?

MS. HECTOR: May I rephrase?

THE COURT: You may.

Q. When you spoke to Mr. Hirst about having received these documents and done the calculation, what did you say to him and what did he say to you?

MR. TREMONTE: Objection, asked and answered.

THE COURT: I'll allow it.

THE WITNESS: Well, first of all, there were mistakes in the calculation that caused an extra $750,000 in expense for the company, and so I brought that to his attention, number one. And number two, is just asked why no one from the finance area was involved in this transaction.

Q. And what was his response to that?

A. His response was that Shant Chalian had done the calculation, and he was not aware that there was any mistakes in the calculations.

THE COURT: "He" being?

THE WITNESS: "He" being Gary Hirst.

THE COURT: Thank you.

Q. Did you speak with Mr. Bianco about your concerns?

A. I did.

Q. What did you say to him and what did he day to you?

A. My conversation with Joe Bianco was that I was upset that this transaction had occurred without my knowledge, and

secondly, that the transaction was wrong in terms of its calculation, and third, that it had incurred additional expense of the company for $750,000.
Q. What was Mr. Bianco's response?
A. His response to me was is that the warrant agreement really wasn't -- the warrant agreement satisfied a $2 million obligation for the company without any cash being expended. And the fact that the holder of the warrant agreement took the risk that the stock would increase in value was his risk, and that with that risk there should be some reward.
He also indicated that this transaction had happened in a previous period of time, and there was really no way to correct any of the facts surrounding this transaction at this time -- at that time.
MS. HECTOR: Ms. Sheinwald, could you pull up Government's Exhibit 509?
Q. Mr. Hlavsa if I just may take a step back. Do you have a sense of what those shares were worth -- I'm sorry.
Do you have a sense of -- well, let me take a step back.
MS. HECTOR: Could we pull up Government's Exhibit 900? Can we look at the share price on 5/27/2010?
Q. What was the stock of Gerova trading at on 5/27/2010?
A. Approximately $13.50.
Q. I'm sorry. I think you're -- look at the -- use the paper

document. I think by using the screen we're not allowing you to see the headers.
A. Oh.
Q. I'm sorry. That may be right. I may be misreading this.
THE COURT: Is there a pending question?
Q. What was the stock price trading at on 5/27/2010?
A. $13.56.
Q. Do you have a sense -- I don't want to make you do too much math in your head -- of what 5,333,333 shares would be worth on that date?
A. No.
MR. TREMONTE: Objection.
THE COURT: Overruled.
THE WITNESS: $13 times 5 million is over $65 million.
MS. HECTOR: May I have one moment?
THE COURT: You may.
(Pause)
MS. HECTOR: Could we pull up Government's Exhibit 509? Could you focus on the email at the bottom of the page?
Q. Who is it from and to?
A. It's from me to Steve Weiss.
Q. When is the dated?
A. September 28th, 2010.
Q. And what do you say to Mr. Weiss?

A. I say, "Steve. Per our conversation, attached are the documents that I have received in connection with warrant being issued and exercised. Michael."

Q. And could you look just at the top of that page, what does Mr. Weiss -- who then does Mr. Weiss forward this email to?

A. Steve Weiss forwards it to Shant Chalian.

Q. And what does he say?

A. "Do you know anything about this???"

Q. Mr. Hlavsa, do you know what Mr. Shahini did with the shares that were issued to him?

THE COURT: Before you get to that, could you refresh our recollection as to who Shant Chalian is?

THE WITNESS: Both Stephen Weiss and Shant Chalian are with the firm Hodgson Russ. They're both counsel that represented Gerova.

THE COURT: Thank you.

Q. Mr. Hlavsa, do you know what Mr. Shahini did with the shares that were issued to him?

A. I do not.

Q. What, if anything, did you decide to do about the fact that the board had not approved this stock issuance?

A. I felt it necessary that the board needed to approve the stock issuance, so I requested Gary Hirst to put it on the agenda for the next board meeting.

Q. And what was his reaction?

A. His reaction was that he did.
Q. Did he ever say that it wasn't required to be done?
A. No.
MS. HECTOR: Can we look at Government's Exhibit 222?
Q. Mr. Hlavsa, what is this document?
A. These are the minutes of a meeting of the board of directors of the company that took place on October 6th, 2010.
Q. Are you the person who created these minutes?
A. I am.
Q. Where was this meeting held?
A. It was held at the Bermuda offices, but all of the people were either gathered in a room or present telephonically.
Q. Who were the board members that are listed as having attended or present at the meeting?
A. It says, "Here present at the meeting were Gary Hirst, Leo de Waal, Arie Bos, Keith Laslop, Jack Doueck, Joseph Bianco, and Michael Hlavsa."
Q. In that paragraph, who does it say is also attending at it board meeting?
A. Also attending were Jason Galanis, Lucas Mann, Greg Laubach, Richard Rudy, Lou Hensley and Stephen Weiss.
Q. Could you read that third paragraph that starts "the board meeting was called to order"?
A. "The board meeting was called to order approximately 12:05 p.m. Bermuda local time on Wednesday, October 6th. Gary

Hirst was the chairman, and Michael Hlavsa the secretary recording the minutes of the board meeting."

MS. HECTOR: Could we turn to the second page of this document, the section entitled "ratification of share issuances"?

A. I see it.

Q. Could you read that section for us?

A. "Gary Hirst presented to the board of directors of the company the warrants and shares that have been issued in connection with settlement agreements with Tag Virgin Islands Inc., Ymer Shahini, and Oxbridge Group, LLC. Thereupon after full discussion and upon motion duly made and seconded, unanimously carried, it was resolved that the board of directors does hereby ratify the warrants and shares issued to Tag Virgin Islands, Inc., Ymer Shahini, and Oxbridge Group, LLC in connection with settle agreements."

Q. To the best of your recollection, is this a reference to the warrant agreement and share issuance to Ymer Shahini?

A. It is.

Q. Do you recall how this issue was presented to the board?

A. I do not.

Q. Turn your attention to Government's Exhibit 600D in evidence. Is this another one of your Skype chats?

A. Yes, it is.

Q. What is the date of this chat?

A. November 19th, 2010.
Q. Could you just read through the dialogue for us from Gary Hirst and then your responses?
A. Sure. It starts at 9:29:16. Gary asks, "Michael?" I respond, "Yes, Gary." Gary asked, "Did you ever prepare minutes for the board meeting on October 6th?" I respond, "No, I have not. I can do over the weekend." Gary's response was, "Do you have typed notes or are they handwritten? It doesn't have to be formal." I respond, "Handwritten, but I can put into the format easily." And then respond a second time saying, "Will send to you tomorrow for review," and his response is, "Okay. Thanks."
Q. Now, Mr. Hlavsa, I want to step back in time for a moment. After the filing of the amended 20-F on June 16th, 2010 but before you learned of the warrant agreement in September, 2010, in that time, did you begin working on another SEC filing?
A. Yes, we did.
Q. What kind of filing was that?
A. That was a Form F-1.
Q. And what is a Form F-1?
A. F-1 is a registration statement for the shares that would ultimately be distributed in connection with the de-SPACing transaction.
Q. What does it mean to register shares?
A. My general understanding is, is that common stock of a

publicly-traded company, unless it's registered with the Securities and Exchange Commission, can't be freely traded. They're restricted. So in order to remove the restrictions, they have to be registered under the guidelines of the Securities and Exchange Commission.

Q. What kinds of information is included in an F-1 registration statement?

A. Information about the company, its business, risk factors associated with the company, disclosures regarding its officers or directors, and anything else that would be informative with respect to the business of the company.

Q. What, if any, information concerning shareholders of Gerova is required to be disclosed in that document?

A. I believe the requirement is probably pretty similar to the 20-F; those shareholders that hold over 5 percent of the shares and those officers and directors that also own over 5 percent of the shares.

Q. Mr. Hlavsa, I'd like to turn your attention now to Government's Exhibit 612. What is this cover document? First page.

A. At the bottom of the page, this is an email from Eric Pinero with Hodgson Russ, and it's a distribution to a number of people. It looks like it's the board members of Gerova at the time. It's to Gary Hirst, myself, Joe Bianco, Keith Laslop, Leo de Waal, Arie Bos, Jack Doueck and Arie Van Roon.

Q. And who is CCed there?
A. Shant Chalian.
Q. Where does Eric Pinero work?
A. Hodgson Russ.
Q. He's one of the other attorneys working there?
A. Yes. He's part of our corporate counsel, yes.
Q. What does Eric Pinero say to this group?
A. He says, "All. Attached what should be substantially the final version of Gerova F-1 resale registration statement for your review, comment, and/or approval to file on Friday, June 30th. If no comments, I kindly ask that you execute above your name in the second attachment and return a signed copy to my attention by PDF or facsimile. Thank you."
Q. What is the date of this email?
A. It's dated July 28th, 2010.
Q. What's attached?
A. It looks like it's the Form F-1.
Q. A draft of the registration or a final?
A. It says here "final version of the Gerova F-1 resale registration statement", so it appears to be the final version.
Q. Was it ever filed?
A. Not to my knowledge.
Q. At the time you received this version of the F-1 registration statement on July 28th, 2010, did you know that over 5 million shares of Gerova had been issued to Ymer

Shahini?
A. I did not.
Q. And if you had known that fact, what, if anything, would you have done with respect to this document?
A. I believe that it would have to be disclosed in the document that the shares were issued.
MR. TREMONTE: Objection, foundation.
THE COURT: What's the basis for your belief and understanding?
THE WITNESS: It would be a material transaction to the company, and all material transactions are disclosed in the registration statement.
THE COURT: I'll allow it to stand.
MS. HECTOR: Your Honor, may I approach?
THE COURT: You may.
Q. Mr. Hlavsa, I'm handing you what's been marked for identification as Government's Exhibit 700. Do you recognize that?
A. I do.
Q. What is it?
A. It's a CD.
Q. Prior to testifying here today, have you had an opportunity to listen to a recording on that CD?
A. I did.
Q. After doing so, did you write your initials on the CD?

A. Yes, I did. I initialed and dated the CD.
Q. Do you see your initials and your date that you did after listening to that CD on it?
A. I do.
MR. TREMONTE: Objection. Your Honor, may we approach?
THE COURT: No. Overruled.
Q. When you listened to the CD, did you recognize the voices on that recording?
A. I did.
Q. Mr. Hlavsa, could you look at what is in front of you in the folder 701, which has been marked, again, just for identification, as Government's Exhibit 701?
A. I have it.
Q. Now, prior to your testimony, have you reviewed this document?
A. I have.
Q. Did you, when you reviewed it, confirm that it was a true and accurate transcript of the recording you listened to on the CD marked Government's Exhibit 700?
A. I did.
Q. Did you confirm that it correctly attributed the voices you heard on that CD?
A. Yes.
Q. You can put that aside.

Mr. Hlavsa, what, if anything, happened in early 2011 that negatively impacted Gerova?

A. There were two articles written about Gerova, and they were not complementary.

MR. TREMONTE: Objection, your Honor. These articles are hearsay.

THE COURT: This is not for the truth of its content, ladies and gentlemen, just for the fact that it was said, because it may tell us why or what this individual did next. It may influence somebody's action, whether it's an article that's true or an article that's false. All right? It might cause you to do something. So the response stands not for the truth of its content in describing the articles as negative, but the fact that there were articles that were negative. It doesn't mean that something negative happened at Gerova, it means that somebody wrote an article that said something negative about Gerova.

Go ahead.

MS. HECTOR: For the same purpose, your Honor --

BY MS. HECTOR:

Q. -- what, in general, was the nature of those articles?

A. There were two things; one was that Jason Galanis was associated with the company, and the second thing was that the company had not provided any current financial information to the public.

Q. What impact, if any, did these articles have on the stock price of Gerova?
A. The stock price was decreased after the publishing of these articles.
Q. What impact, if any, did the decrease in the stock price have on Gerova's ability to continue to operate?
A. The decrease in the stock price did not affect Gerova's ability to operate, however, it affected its ability to do future transactions using its stock as a currency.
Q. Now, what was the reaction, if you recall, of the New York Stock Exchange to this information?
A. The New York Stock Exchange asked us to respond to these allegations in a formal way.
Q. Did the New York Stock Exchange eventually take any action with respect to Gerova's stock?
A. My recollection is that the New York Stock Exchange suggested that we suspend trading of the stock while these issues are being investigated, and the company agreed to do just that.
Q. After trading was suspended, was it ever reinstated?
A. It was not.
Q. When did you stop working at Gerova?
A. April, 2011.
Q. Is Gerova still in existence, if you know?
A. Gerova filed for bankruptcy, and I believe it is not in

existence any longer.

MS. HECTOR: May I have one moment, your Honor?

THE COURT: Yes.

(Pause)

MS. HECTOR: That's all I have, your Honor.

THE COURT: All right. While I like to work until 5:00, my clock has it as 4:59, so I'm not going to get too hypertechnical here.

Ladies and gentlemen, as always, do not discuss the case among yourselves or with anyone. This is not an opportunity to do internet research on matters arising in the trial. That is a violation of the Court's order and your duties and oath as jurors. This case must be decided on what comes out in the courtroom and nothing else. If it comes out in the courtroom, each side has a fair opportunity to address the matter. So be patient, we're making good progress in the case, and I will see you back tomorrow morning at 10:00 a.m. Thank you.

(Continued on next page)

(Jury not present)

THE COURT: A few issues to take up. There is a request by the government regarding several of the comments that were made in the defendant's opening statement that stated or implied that -- well, I'll quote one of them. "Gary is an innocent scapegoat. He is being unfairly blamed for the crimes of others. Gary Hirst is being unfairly blamed for the crimes of others. He is the scapegoat. The patsy. The fall guy. He is bearing the sins of Jason Galanis, the sins of Gerova."

The government proposes to elicit from a law enforcement agent the fact that six other people were charged in connection with the conduct in the indictment. It further proposes to elicit the disposition -- well, the identity of those charged and the disposition of the cases.

Let me hear from defense counsel.

MS. HARRIS: May I have one moment, your Honor? We had a lot going on today. I want to confer with --

THE COURT: Yes.

(Pause)

MS. HARRIS: Your Honor, just because, obviously, I did the opening, I'll take the laboring oar on this.

Our intent in the statements in the opening are really about the witnesses who are coming here in court today, it was not meant -- today, tomorrow, yesterday. They are all the individuals who participated in Gerova we believe boar responsibility, and I believe the opening made very clear that our position was, our defense and our understanding of the facts and the proof that will be at trial would show that at the time in 2010, they actually didn't have problems with it. That they weren't surprised and shocked. That this wasn't what they're saying it is now.

So the notion of a scapegoat is not visa vis unknown people outside the courtroom or individuals who aren't here and charged, but is really about the people that the government is calling as witnesses against Mr. Hirst, that they are now today shifting the blame that properly we believe should -- you know, that we hope to convince the jury should have been borne by themselves at the time and shift the blame to Mr. Hirst.

I just want to, for whatever it's worth, explain the context, and I believe that's consistent and another piece that the story be told, which was repeatedly that the evidence will show that in 2010 they thought it was fine, the individuals who are going to come to court now are wanting to avoid responsibility. So that was the context of the scapegoat, the fall guy. They're trying to blame someone else and not themselves.

That being said, I'm trying to imagine what -- I'm not sure that we have a strong position on the fact of the guilty pleas of the other individuals coming in. I think we would -- if your Honor ruled that that was somehow appropriate, I think we would prefer to do it by stipulation. But I don't think it's necessary, given the opening, I don't think the opening triggered a need for that. Your Honor gave a very strong, I would suggest, curative instruction following the opening. To the extent there are concerns that it was for something beyond the courtroom, I think that was addressed by the Court's instruction, but I don't think we have strong feelings about this.

THE COURT: I will say, having heard the opening statement, it was my sincere read of the comment, it was followed -- it was preceded, I should say, by the comment "but somehow, even though all of Gerova's officers and directors knew the same thing as Gary knew and approved and ratified the transactions, at counsel table, at defense table today is only one man, our client, Gary Hirst."

Now, I note that particular comment can be read to be referring to others within Gerova, but then it was followed by the line regarding "bearing the sins of Jason Galanis, the sins of Gerova."

MS. HARRIS: Correct, your Honor. But that's because, you know, our position and our view of the evidence is that Mr. Hirst was similarly duped, as I think the government implicitly is taking the position that's with respect to the individuals who are testifying for the government. So anyway, that's our context, again, for whatever it's worth.

THE COURT: All right. Ms. Harris, let me say that I accept your statement as to your subjective belief, but as the judge presiding, I took the statement as an affirmative assertion by the defense that certainly Jason Galanis had not been charged and others had not been charged. I will allow the government to elicit the fact and the identity of others who have been charged. I will not allow the government to elicit the disposition, and I will follow that by the instruction that, "You're not to speculate why others are not on trial in this case. This case is about whether the government has proved the charge against Mr. Hirst by proof beyond a reasonable doubt, and it is only the charge as it applies to Mr. Hirst that you need concern yourself with."

Any objection to that?

MS. HARRIS: No, your Honor.

THE COURT: Any objection from the government to that?

MR. BLAIS: No, your Honor.

THE COURT: Let's talk about the expert witness issue. As I understand it, the document which prompts the retention of an expert who was not noticed is a document that was produced to the defense in discovery; is that correct?

MR. TREMONTE: No -- or no -- the answer is no, it was not produced to us in discovery.

THE COURT: It was produced as 3500 material?

MR. TREMONTE: It was not.

THE COURT: All right. Well, how did the defense become aware of the existence of the document?

MR. TREMONTE: A version of the document was produced to us in Rule 16 discovery. And best we can tell, that version of the document is a document -- sort of an original email, and I have a copy of it, plus a collection of other documents, all of which appear to have been scanned together by the producing party, turned over in that form to the SEC, provided in turn to the government, and turned over in that form to us.

That document, among others, was of great interest to us because, in the form in which it was produced, it indicated that a copy of the warrant agreement, that is solicited testimony on today, was, in fact, in possession of Continental Stock Transfer.

That turned out not to be the case. We learned that that was not the case through our own diligent efforts. We issued subpoenas, we called lawyers for the various witnesses, and on, I think it was, the 7th of last Wednesday, we received from the lawyers from Hodgson Russ, the lawyers -- the law firm that, on the one hand Shant Chalian, Eric Pinero and Steve Weiss were with, and then on the other hand now represents Continental Stock Transfer, we've had a very extensive and complicated back and forth with them, but we got from them the original of the email plus the original of the attachment. That is what we received for the first time on the 7th.

We received two days later a log that had been provided to the SEC, I think long ago, and to the government on the 9th of documents --

THE COURT: 9th of what month?

MR. TREMONTE: -- i'm sorry, the 9th, last Friday -- a very, very lengthy compendious log that had been provided to us and the government, I think, on the same day, or to the government and then Mr. Blais provided it to us, which listed lots and lots of documents that my understanding is Hodgson Russ agreed to make available to the SEC if the SEC wanted them in their native form.

Because again, my understanding, based on our review of the voluminous Rule 16 discovery in this case, is no documents or very few documents, in any event, were produced in native form, they were just produced as copies. When we got the document on the 7th, we did not get it from the government, your Honor, we got it from Hodgson Russ, though our understanding is that it had always been available to the government upon request. We did not know that until the 9th -- I'm sorry, the SEC upon request.

I don't know what communications there were between Hodgson Russ and the government or SEC and the government. I don't know if the U.S. Attorney's office had access to this document. I frankly don't know if it was in their possession. That's still not clear to me. But we got it for the first time on the 7th.

THE COURT: All right. Let me ask you. You had the document, not in native format but as a PDF of some sort, is that what it was?

MR. TREMONTE: Yes. It's what's called a TIF file.

THE COURT: Okay.

MR. TREMONTE: Again, the document that we had turned out not to be an accurate reproduction of the document that we got on the 7th.

THE COURT: No, but you had the TIF file.

MR. TREMONTE: Yes, we did have the TIF file, that's correct. Each page of the document had a TIF file, and that TIF file corresponds to or was produced when whoever physically photocopied the documents at Hodgson Russ made them available to the SEC.

THE COURT: All right. But at that point, if you had concerns about the authenticity of the document or the accuracy of the dates reflected in the document, you had available to you certain remedies, such as approaching Hodgson Russ, correct?

MR. TREMONTE: We did. I think we approached everyone, including the government, looking for originals. We issued FOIA requests to the SEC. We've had an extensive debate with Hodgson Russ over a period of months which we've chronicled to some extent and can certainly chronical further.

But that was the first time that it ever became known to us, despite our diligent efforts, that these original files existed and were available.

THE COURT: All right. What you propose to do, you want to now serve an expert disclosure and call an expert witness for whom you had not previously served a disclosure; is that correct?

MR. TREMONTE: That is correct, your Honor. And that's because, based on our research, in the majority of cases where metadata is presented to a jury, it is presented through an expert. The testimony of the expert is relatively straightforward. Metadata is not, in principle, a complicated thing to understand or explain, but it does typically come in through an expert witness.

(Continued on next page)

THE COURT: Let me hear from the government.

MR. BLAIS: Your Honor, just to be very clear, regarding the initial question that was asked, these documents were produced in the government's Rule 16 discovery. They were produced in the exact form that we received them from the SEC. It was the original subpoena and party in connection with these documents. We received them as concordance files and we produced them as concordance files sometime back in the end of 2015. So these documents, at least in the form produced by us and in the form possessed by us, were produced to defense counsel more than nine months ago.

They obtained, it sounds like in the middle of last week, directly from the producing party the native format. That is not a format that we ever had in our possession, custody or control prior to. And they did provide it to us. I am not claiming that they didn't then disclose it to us, but it was not something we had in native file form and hadn't produced to defense counsel.

THE COURT: I think the interesting question for me, one of the questions here is, through the exercise of diligence, could the defendant have obtained the native format, the metadata, at an earlier point in time?

Now, one might say, why would they bother to ask? Well, if based on your investigation of the facts of the case you had reason to think that a document was not created when it was alleged to have been created, or was created at a later date, not an earlier date, that would be something that might come to mind as an avenue of investigation. And giving you a shot at answering the question, but I am more interested in Mr. Tremonte's answer.

MR. BLAIS: It's difficult for me to speak to the difficulties of obtaining a document from a producing party. Obviously, I am not at that producing party. I don't know the efforts. I know Mr. Tremonte has detailed some of them, but I don't know the efforts that were engaged in or the timing of them. So I really can't speak to the difficulties.

THE COURT: Was it open to Mr. Tremonte to serve a subpoena?

MR. BLAIS: Of course.

THE COURT: If the law firm was playing games and dragging its feet, do the rules of criminal procedure give it the opportunity to serve a subpoena for the documents?

MR. BLAIS: Of course. The regular rules of compulsory process apply in this matter. Rule 17 or other subpoenas could have been issued, motions to compel production of materials could have been filed with this Court.

Again, I don't know the extent of the efforts that were engaged, but of course the standard compulsory process under the rules apply in this case as well as any other.

THE COURT: All right. Let me give Mr. Tremonte an opportunity to respond.

MR. TREMONTE: Your Honor, that's exactly what we did. We subpoenaed Hodgson Russ. I really don't think there is anything else we could have done in this case to try to get documents from Hodgson Russ. I am sure there is always something, but we subpoenaed them months ago, and we have been in consistent, focused discussions with them, and we have managed to get them to produce a very limited set of documents. We didn't stop at their first production. We didn't stop at the second round. We kept going, and we kept going up until the 7th, and we kept going after that.

So I think what we have in our possession is in fact the product of precisely the kind of diligence efforts that are available under the rule.

THE COURT: I am aware that one option that a lawyer has is to continue to negotiate with the subpoenaed party. It's always an option. Sometimes it's a good option perhaps. But it would appear that there is also the option available to say, I am going to the court to compel compliance, you're not complying with my subpoena.

When did you serve the subpoena?

MR. TREMONTE: Your Honor, I'd have to check our records, but it's some time ago.

I don't want to misspeak. I actually don't have that information at my fingertips.

THE COURT: I am going to ask for that information.

What is the basis for the government's objection otherwise? The government is not on the eve of resting. Why can't the government prepare for the testimony of an expert and obtain an expert of its own?

MR. BLAIS: Your Honor, we are not quite on the eve of resting, but we are not that far from being on the eve of resting. I anticipate, at the pace we are going, that next Tuesday or Wednesday may be the time that we rest. So we are talking about less than a week to engage, prepare and consult with an expert about an issue as to which, I think, based on -- again, we have only known about this for 12 hours or so, based on our preliminary research, raises real reliability concerns.

It seems to be, at least according to very preliminary research, fairly simple to alter the created date on an Adobe PDF, the metadata that they are referring to. And I think it may be necessary to challenge the reliability of this expert's methods, to confront him before he is allowed to testify to the jury about this, and we are at a point in the trial where there is not a lot of opportunity before the government rests in order for that to happen. So I think that is the reality of the concern that we have.

THE COURT: All right. I am just going to give the government fair notice I have a greater inquiry to make on this, in terms of hearing from Mr. Tremonte in response to the question that I posed and considering this. But I want to put the government on fair notice that you should prepare for the possibility that I may allow the witness, and therefore be prepared to cross the witness, and if you choose, to call one of your own.

I take it Mr. Tremonte would not have an objection to the government calling a rebuttal witness.

MR. TREMONTE: Absolutely not, your Honor.

MR. BLAIS: Duly noted, your Honor.

I think the other concern that we have is the timing with which this disclosure was made. They have had this document since the 7th.

THE COURT: When you say "this document," they have the document which now prompts the present application since the 7th; is that what you're saying?

MR. BLAIS: That is correct, your Honor.

THE COURT: Is that correct, Mr. Tremonte?

MR. TREMONTE: Yes, your Honor, it is.

MR. BLAIS: I think, pursuant to their expert disclosures, they had consulted with an expert and essentially received a conclusion from the expert regarding the creation date of this document on September 11, which is the Sunday, the day before we started the trial and two days before we opened. And it was only after openings and after the first day of testimony that either we or the Court received any notice about this potential issue. We may have, had we received notice on Sunday, asked for a brief adjournment to address this issue. It may have impacted how we opened or presented evidence in this case. I think that is part of the significant concern that we have, is when we learned about their intent to notice an expert in this case.

THE COURT: I hear what you're saying, but I haven't been able to discern what the government would have done differently in its opening. What would you have done differently?

MR. BLAIS: It's unclear at this point because we haven't consulted an expert who will be able to assist us with sorting through this metadata issue. But we certainly, I think, opened strongly on the fact -- and I think we presented the evidence that supports our argument -- that Mr. Shahini was only recruited into this scheme in May of 2010, even though documents are dated at earlier time periods, January 2010 for the consulting agreement and March for the warrant agreement. I think we opened pretty strongly on that fact.

To the extent there is evidence suggesting that the document in question was actually created in April, I think that's directly contrary to an argument we made in opening.

THE COURT: Now, another question. As I understand it, the defense turned over these documents at or about the time they received them, is that correct?

MR. BLAIS: I believe we received them from defendant on September 11, on Sunday as well.

THE COURT: Is that correct, Mr. Tremonte?

MR. TREMONTE: That is correct, your Honor.

THE COURT: All right.

MR. TREMONTE: Just so that the record is clear, your Honor, the reason for that -- whatever it was -- 18-hour delay, there was a necessary process of determining whether or not the metadata resulted in our deciding that this was a document that we would actually want to use. Even though we didn't ultimately confirm a testifying expert would be available and would be able to testify consistent with that preliminary conclusion, we nevertheless turned it over within 40 minutes of reaching them.

THE COURT: How would you get the document into evidence?

MR. TREMONTE: Your Honor, the document is in evidence.

THE COURT: The document that you say you got on September 7.

MR. TREMONTE: It is the same document as 509, except it's the original. And metadata is not hearsay. So there shouldn't be any problem at all as to its admissibility.

THE COURT: The metadata doesn't walk in on its own two feet. How do you get it in?

MR. TREMONTE: The metadata is an integral part of the document which should be in evidence. The document that's already in evidence, Government Exhibit 509, is the same document. I think it would be --

THE COURT: How do you get metadata in? How do you connect the metadata to the document which is in evidence? How does that come in?

For example, you're standing up here. You seem like a nice guy. But on your say-so this metadata walks into evidence?

MR. TREMONTE: No, your Honor.

I think there are a number of ways we can do it. One straightforward way would be to call the producing party, which is the custodian at Hodgson Russ.

THE COURT: You would get it in through the business record exception.

MR. TREMONTE: Yes, your Honor.

THE COURT: And what would the government say if defense says to me, well, plan B here is, if we can't call the expert, then we will call the document custodian, and the document custodian is going to lay a business record foundation and the metadata walks into evidence?

MR. BLAIS: Certainly, your Honor, if a document custodian authenticates the document and it fits within the hearsay exception, then it would be admitted. But I don't know who would then explain the technicalities of the metadata. I don't know that a custodian from Hodgson Russ would be able to explain the metadata that exists within that document.

THE COURT: I don't know the form it takes. I don't know what we are talking about, whether it would be something as plain as the nose on your face to a juror bears an April date on it. I don't know. I haven't seen this so I am in the dark in that regard so I don't know.

MR. BLAIS: Just to be clear, this document is not in evidence. There are obviously different versions of the warrant agreement.

THE COURT: I have got that part. That's why I asked the question how would you get it into evidence.

MR. BLAIS: Understood.

THE COURT: Let me inquire of Mr. Tremonte. What form does the metadata take? Is it observable by a layperson? Is it something like a creation date or some such thing?

MR. TREMONTE: It is, your Honor. Again, I don't have a lot of technical expertise, but my understanding is -- and I have been sort of walked through this -- is that it's essentially as straightforward as, when you bring up a PDF document, you can right click on it and it will give you properties. It is sort of that degree of complexity to get at it. And once you're at it, you sort of see this field of text, and it says things, some of which are pretty readily apparent and some of which aren't. And one of the things that's pretty readily apparent is it says something along the lines of creation date, and then there is a date next to it.

THE COURT: Then the next question becomes, why do you need an expert witness? Maybe the government needs an expert witness to explain the document, but why do you need an expert witness?

MR. TREMONTE: Again, we did this research, which suggests that to the extent that there are reported decisions that describe the circumstances under which this type of evidence is admitted, so far as we can tell, it's typically through an expert. I think to have an expert on the stand would facilitate the jury's understanding, even though it wouldn't require an especially elaborate or detailed explanation. I can't speak to what the government would want to do.

MR. BLAIS: Your Honor, I know there is an argument that this is sort of a readily observable quality of the document. There are readily observable facts in nature. My fingerprints, for example, are readily observable facts in nature, and I can't put a layperson on the stand to do a fingerprint comparison even though it's a readily observable fact. That is the kind of testimony that requires expertise and a foundation for a person testifying as to those facts.

And I think Mr. Tremonte is correct that the case law generally states that testimony about metadata is something that requires expertise and the qualification of somebody as an expert before testifying about it. The mere fact that it's a readily observable quality of a document doesn't, I think, or readily observable fact in nature, automatically transfer into simple lay testimony.

THE COURT: I am happy to have any further learning that any of you have on this subject, and I consider it an open issue, and I suspect we will talk about it further.

See you all tomorrow.

MR. TREMONTE: Thank you, your Honor.

MR. BLAIS: Thank you, your Honor.

(Adjourned to September 15, 2016, at 10:00 a.m.)

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